IDAHO CODE

2013 CUMULATIVE SUPPLEMENT

TITLES 33 and 34

MICHIE

2013
CUMULATIVE
POCKET SUPPLEMENT

IDAHO CODE

Compiled Under the Supervision of the
Idaho Code Commission

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TITLES 33-34

MICHIE

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2013 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
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Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

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ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013

TITLE 33

EDUCATION

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CHAPTER 1

STATE BOARD OF EDUCATION

SECTION.

33-102A. Office of the state board — Executive officer — Appointment — Compensation — Duties and powers.

SECTION.

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33-102A. Office of the state board — Executive officer — Appointment — Compensation — Duties and powers. — There is hereby created as an executive agency of the state board of education the office of the state board of education. The state board of education is hereby authorized to appoint an executive officer of the state board who shall serve at the pleasure of the state board and shall receive such salary as fixed by the state board. The executive secretary may be appointed as the executive officer. The executive officer shall, under the direction of the state board, have such duties and powers as prescribed by the said board of regents and the state board of education, not otherwise assigned by law.

History.
I.C., § 102A, as added by 1965, ch. 253, § 2, p. 637; am. 1972, ch. 85, § 2, p. 172; am. 1974, ch. 10, § 3, p. 49; am. 1993, ch. 404, § 3, p. 1470; am. 1996, ch. 217, § 1, p. 717; am. 2011, ch. 222, § 1, p. 609.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 222, deleted the former second sentence, which read: "No employee or contractor of the executive officer of the state board of education or the office of the state board of education shall serve as a tenured faculty member of or have a contract with a state college or university"; and deleted the former last sentence, which read: "As used in this section, a 'contractor' shall mean a person who has signed or agreed to a contract with the state board of education or the executive officer of the state board of education for a period longer than six (6) months in duration."

33-107. General powers and duties of the state board. — The state board shall have power to:

(1) Perform all duties prescribed for it by the school laws of the state;

(2) Acquire, hold and dispose of title, rights and interests in real and personal property;

(3) Have general supervision, through its executive departments and offices, of all entities of public education supported in whole or in part by state funds;

(4)(a) Delegate to its executive secretary, to its executive officer, or to such other administrators as the board may appoint, such powers as said officers require to carry out and administer the policies, orders and directives of the board;

(b) Delegate to its executive officer, if necessary to enhance effectiveness and efficiency, such powers as he requires to exercise discretionary authority and to perform duties vested in the state board related to the operation, control and management of Idaho's state universities and colleges and other agencies under the supervision and governance of the state board, and to perform duties and render decisions prescribed to the state board involving the exercise of judgment and discretion that affect the public schools in Idaho;

(c) Delegate to the presidents of Idaho's state universities and colleges, if necessary to enhance effectiveness and efficiency, such powers as said officers require to exercise discretionary authority and to perform duties vested in the state board related to the operation, control and management of Idaho's state universities and colleges;

(d) Delegate to its executive secretary, the superintendent of public instruction, if necessary to enhance effectiveness and efficiency, such powers as he requires to perform duties and render decisions prescribed to the state board involving the exercise of judgment and discretion that affect the public schools in Idaho;

(e) Delegations of powers under this subsection must be adopted as statements of agency action by the state board, as provided in section 33-105(2), Idaho Code, and pursuant to a process that provides for notice, opportunity for input and formal adoption by the state board;

(5) Through its executive departments and offices:

(a) Enforce the school laws of the state,

(b) Study the educational conditions and needs of the state and recommend to the legislature needed changes in existing laws or additional legislation;

(6) In addition to the powers conferred by chapter 24, title 33, Idaho Code:

(a) Maintain a register of postsecondary educational institutions approved to provide programs and courses that lead to a degree or which provide, offer and sell degrees in accordance with the procedures established in chapter 24, title 33, Idaho Code,

(b) Determine whether to accept academic credit at public postsecondary educational institutions in Idaho. Academic credit shall not be transferred into any Idaho public postsecondary institution from a postsecondary educational institution or other entity that is not accredited by an organization recognized by the board,

(c) Maintain a register of proprietary schools approved to conduct, provide, offer or sell a course or courses of study in accordance with the procedures established in chapter 24, title 33, Idaho Code;

(7) Prescribe the courses and programs of study to be offered at the public institutions of higher education, after consultation with the presidents of the affected institutions;

(8) Approve new courses and programs of study to be offered at community colleges organized pursuant to chapter 21, title 33, Idaho Code, when the courses or programs of study are academic in nature and the credits derived therefrom are intended to be transferable to other state institutions of higher education for credit toward a baccalaureate degree, and when the

courses or programs of study have been authorized by the board of trustees of the community college.

History.
1963, ch. 13, § 7, p. 27; am. 1970, ch. 79, § 1, p. 195; am. 1974, ch. 10, § 5, p. 49; am. 1977, ch. 53, § 1, p. 103; 1983, ch. 155, § 2, p. 431; am. 1986, ch. 31, § 1, p. 101; am. 1987, ch. 48, § 1, p. 76; am. 1993, ch. 57, § 1, p. 154; am. 1997, ch. 188, § 1, p. 512; am. 1999, ch. 339, § 2, p. 918; am. 2006, ch. 240, § 1, p. 725; am. 2010, ch. 128, § 1, p. 274.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 128, added the paragraph (4)(a) designation and therein inserted "and administer"; and added paragraphs (4)(b) through (4)(e).

33-107B. Board may establish an optional retirement program for community colleges and postsecondary professional-technical education institutions. — (1) The state board of education may establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for members of the teaching staff and officers of community colleges and postsecondary professional-technical education institutions, including north Idaho college, college of southern Idaho and eastern Idaho technical college, hired on or after July 1, 1997; provided however, that no such employee shall be eligible to participate in an optional retirement program unless he would otherwise be eligible for membership in the public employee retirement system of Idaho. The benefits to be provided for or on behalf of participants in an optional retirement program shall be provided through annuity contracts or certificates, fixed or variable in nature, or a combination thereof, whose benefits are owned by the participants in the program.

(2) The state board of education is hereby authorized to provide for the administration of the optional retirement program and to perform or authorize the performance of such functions as may be necessary for such purposes. The board shall designate the company or companies from which contracts are to be purchased under the optional retirement program and shall approve the form and contents of such contracts. In making the designation and giving approval, the board shall consider:

(a) The nature and extent of the rights and benefits to be provided by such contracts for participants and their beneficiaries;

(b) The relation of such rights and benefits to the amount of contributions to be made;

(c) The suitability of such rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of staff members; and

(d) The ability of the designated company to provide such suitable rights and benefits under such contracts.

(3) Elections to participate in an optional retirement program shall be as follows:

(a) Eligible employees are the teaching staff and officers initially appointed or hired on or after the effective date of this chapter. All eligible

employees, except those who are vested members of the public employee retirement system of Idaho, shall participate in the optional retirement program.

(b) Eligible employees who are vested members of the public employee retirement system of Idaho may make a one (1) time irrevocable election to transfer to the optional retirement program. The election shall be made in writing and within sixty (60) days of the date of initial hire or appointment, or one hundred fifty (150) days after the effective date of this chapter, whichever occurs later. The election shall be filed with the administrative officer of the employing institution. The election shall be effective not later than the first day of the second pay period following the date of the election.

(c) Teaching staff and officers employed by the institution the day before the effective date of this chapter may make a one (1) time irrevocable election to participate in the optional retirement program. The election shall be made in writing and within one hundred fifty (150) days after the effective date of this chapter. The election shall be filed with the administrative officer of the employing institution. The election shall be effective not later than the first day of the second pay period following the date of the election.

(d) The accumulated contributions of employees who make the one (1) time irrevocable election or are required to participate in the optional retirement program may be transferred by the public employee retirement system of Idaho to such qualified plan, maintained under the optional retirement program, as designated in writing by the employee.

(e) An election by an eligible employee of the optional retirement program shall be irrevocable and shall be accompanied by an appropriate application, where required, for issuance of a contract or contracts under the program.

(4)(a) Each institution shall contribute on behalf of each participant in its optional retirement program the following:

(i) To the designated company or companies, an amount equal to seven and eighty-one hundredths percent (7.81%) of each participant's salary, reduced by any amount necessary, if any, to provide contributions to a total disability program provided either by the state or by a private insurance carrier licensed and authorized to provide such benefits, or any combination thereof, but in no event less than five percent (5%) of each participant's salary;

(ii) To the public employee retirement system, an amount equal to three and eighty-three hundredths percent (3.83%) of salaries of members who are participants in the optional retirement program. This amount shall be paid until July 1, 2011, and is in lieu of amortization payments and withdrawal contributions required pursuant to chapter 13, title 59, Idaho Code; and

(iii) Effective on and after July 1, 2011, the institutional contribution optional retirement program rate shall be equal to the PERSI contribution rates.

(b) For the purposes of section 59-1322, Idaho Code, the term "projected

salaries" shall include the sum of the annual salaries of all participants in the optional retirement program established pursuant to this section.

(c) Each participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%). Employee contributions may be made by employer pick-up pursuant to section 59-1332, Idaho Code.

(5) Any person participating in the optional retirement program shall be ineligible for membership in the public employee retirement system of Idaho so long as he remains continuously employed in any teaching staff position or as an officer with any of the institutions under the jurisdiction of the state board of education.

(6) A retirement, death or other benefit shall not be paid by the state of Idaho or the state board of education for services credited under the optional retirement program. Such benefits are payable to participants or their beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

History.
I.C., § 33-107B, as added by 1997, ch. 275, § 2, p. 813; am. 1998, ch. 297, § 2, p. 979; am. 1999, ch. 329, § 29, p. 852; am. 2011, ch. 118, § 1, p. 327.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 118, added paragraph (4)(a)(iii).

33-107C. Board may establish additional retirement plans. — (1) The state board of education and the board of regents of the university of Idaho may establish one (1) or more retirement plans as described herein for members of the teaching staff and officers of the university of Idaho, Idaho state university, Boise state university, Lewis-Clark state college and the state board of education who are eligible to participate in an optional retirement program described in section 33-107A, Idaho Code, or section 33-107B, Idaho Code, or who are vested members in the public employee retirement system of Idaho.

(2) A plan established under this section shall comply with federal tax laws applicable to the design of the plan, which may include sections 401(a), 403(b), 415(m), 457(b) and 457(f) of the Internal Revenue Code or other federal tax laws.

(3) To the extent permitted by federal tax law, a plan established under this section may provide for contributions or payments solely at the direction of the employer, or deferral of an employee's compensation at the election of the employee.

History.
I.C., § 33-107C, as added by 2009, ch. 286, § 1, p. 859.

STATUTORY NOTES

Federal References.
The Internal Revenue Code provisions, referred to in subsection (2), are codified as 26 USCS §§ 401(a), 403(b), 415(m), 457(b), and 457(f), respectively.

33-107D. Campus access for religious students. — (1) No state postsecondary educational institution shall take any action or enforce any policy that would deny a religious student group any benefit available to any other student group based on the religious student group's requirement that its leaders adhere to its sincerely held religious beliefs or standards of conduct.

(2) As used in this section:

(a) "Benefits" include without limitation:

(i) Recognition;

(ii) Registration;

(iii) The use of facilities at the state postsecondary educational institution for meetings or speaking purposes;

(iv) The use of channels of communication of the state postsecondary educational institution; and

(v) Funding sources that are otherwise available to any other student group through the state postsecondary educational institution.

(b) "State postsecondary educational institution" means a public postsecondary organization governed or supervised by the state board, the board of regents of the university of Idaho, a board of trustees of a community college established pursuant to the provisions of chapter 21, title 33, Idaho Code, or the state board for professional-technical education.

History.
I.C., § 33-107D, as added by 2013, ch. 190, § 1, p. 472.

33-109. Annual report. — The state board shall cause to be prepared a report of its actions and expenditures for each year ending on the thirtieth day of June with such recommendations as it shall deem proper for the good of the state educational institutions and public schools of the state. Such report shall be prepared in the form and number, and filed at the time, provided by section 67-3502, Idaho Code.

History.
1963, ch. 13, § 9, p. 27; am. 1976, ch. 9, § 1, p. 25; am. 2010, ch. 79, § 8, p. 133.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 79, substituted "section 67-3502" for "sections 59-608 and 59-609."

33-118. Courses of study — Curricular materials — Online courses. — (1) The state board shall prescribe the minimum courses to be taught in all public elementary and secondary schools, and shall cause to be

prepared and issued, such syllabi, study guides and other instructional aids as the board shall from time to time deem necessary.

(2) The board shall determine how and under what rules curricular materials shall be adopted for the public schools, including the fees necessary to defray the cost of such adoption process. The board shall require all publishers of textbooks approved for use to furnish the department of education with electronic format for literary and nonliterary subjects when electronic formats become available for nonliterary subjects, in a standard format approved by the board, from which reproductions can be made for use by the blind.

(3) The board shall, by rule, determine the process by which the department of education reviews and approves online courses, pursuant to section 33-1024, Idaho Code, and the fees necessary to defray the department's cost of such review and approval process.

History.

1963, ch. 13, § 18, p. 27; am. 1994, ch. 333, § 1, p. 1027; am. 1998, ch. 88, § 1, p. 298; am. 1999, ch. 88, § 1, p. 289; am. 2012, ch. 189, § 1, p. 509; am. 2013, ch. 299, § 1, p. 791.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 189, added "Online courses" to the section heading; divided the existing provisions of the section into subsections (1) and (2); in subsection (2), inserted "including the fees necessary to defray the cost of such adoption process"; and added subsection (3).

The 2013 amendment, by ch. 298, substituted "section 33-1024" for "section 33-1627" in subsection (3).

JUDICIAL DECISIONS

Religious Texts.

State education officials were reasonable in their belief that their banning religious texts from public school curriculum was lawful in light of Idaho Const. art. IX, § 6, § 33-118, 33-118A, this section, and a legal opinion from a deputy in the attorney general's office upon which they acted. Nampa Classical Acad. v. Goesling, 714 F. Supp. 2d 1029 (D. Idaho 2010).

33-118A. Curricular materials — Adoption procedures. — All curricular materials adoption committees appointed by the state board of education shall contain at least two (2) persons who are not public educators or school trustees. All meetings of curricular materials adoption committees shall be open to the public. Any member of the public may attend such meetings and file written or make oral objections to any curricular materials under consideration.

"Curricular materials" is defined as textbook and instructional media including software, audio/visual media and internet resources.

History.

I.C., § 33-118A, as added by 1986, ch. 302, § 1, p. 752; am. 1998, ch. 88, § 2, p. 298; am. 2001, ch. 183, § 9, p. 613; am. 2008, ch. 217, § 1, p. 674; am. 2012, ch. 69, § 1, p. 200.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 69, deleted "A complete and cataloged library of all curricular materials adopted in the immediately preceding three (3) years and used in Idaho public schools, and all electronically available curricular materials used in Idaho public schools are to be maintained at the state department of education at all times and open to the public" from the end of the first paragraph.

JUDICIAL DECISIONS

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33-123. Education for inmates under jurisdiction of department of correction. — The state board for professional-technical education, in cooperation with the state board of correction, shall have prepared suitable courses of study, including professional-technical training, for prisoners held under the jurisdiction of the department of correction, and the state board of correction shall make arrangements carrying into effect all provisions for the education of prisoners who are under the jurisdiction of the department of correction to the extent possible within the limits of moneys appropriated by the state legislature. Such educational opportunities shall be limited to those inmates who have a need, such need to be determined by the staff of the department of correction, and can benefit from training, and those inmates whose degree of custody classification allows participation in the classroom environment provided.

History.

1963, ch. 13, § 23, p. 27; am. 1982, ch. 64, § 1, p. 126; am. 1999, ch. 329, § 1, p. 852; am. 2009, ch. 28, § 1, p. 80.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 28, inserted "for professional-technical education" near the beginning.

33-124. Special vocational education programs. — Any school district, or combination of school districts, within the state of Idaho, including charter districts, may submit to the state board of education a plan for the operation of a program providing instruction and training for students with disabilities under the age of twenty-two (22) years in vocational education. The state board of education may approve or disapprove such a plan. However, should the state board approve such a plan, then the program operated under such a plan shall be entitled to all considerations and benefits which by law are available to the educational programs of the school districts.

History.

I.C., § 33-124, as added by 1969, ch. 218, § 1, p. 713; am. 2010, ch. 235, § 11, p. 542.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 235, substituted "students with disabilities" for "handicapped students" in the first sentence.

33-125. State department of education — Creation — Duties. — There is hereby established as an executive agency of the state board of education a department known as the state department of education. The state superintendent shall serve as the executive officer of such department and shall have the responsibility for carrying out policies, procedures and duties authorized by law or established by the state board of education for all elementary and secondary school matters, and to administer grants for the promotion of science education as provided in sections 33-128 and 33-129, Idaho Code. The department shall perform the duties assigned to it as specified in section 67-5745D, Idaho Code, relating to the Idaho education network.

History.
1972, ch. 126, § 1, p. 249; am. 1974, ch. 10, § 7, p. 49; am. 1991, ch. 139, § 1, p. 330; am. 2008, ch. 260, § 2, p. 753.

STATUTORY NOTES

Compiler's Notes.
This section was amended by S.L. 2011, ch. 247, effective April 8, 2011. The amendment by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions.

33-125A. Idaho education network — Duties of the state superintendent of public instruction and the state department of education. — Under the direction of the state superintendent of public instruction, the state department of education shall:

(1) Coordinate with the Idaho digital learning academy as provided for in chapter 55, title 33, Idaho Code, the state board of education and school districts to distribute telecourses, teleconferences and other instructional and training services to and between public schools;

(2) Coordinate with the Idaho digital learning academy, the state board of education and institutions of higher education to distribute college credit telecourses, teleconferences and other instructional and training services;

(3) Act as a clearinghouse for the materials, courses, publications and other applicable information related to the requirements of this section;

(4) Coordinate all e-rate funding applications for Idaho's school districts and implement e-rate funds through the department of administration for related services provided under the purview of the Idaho education network (IEN); and

(5) Appoint four (4) representatives to the Idaho education network program and resource advisory council (IPRAC) pursuant to the provisions of section 67-5745E, Idaho Code.

History.
I.C., § 33-125A, as added by 2009, ch. 131, § 1, p. 410; am. 2010, ch. 357, § 1, p. 935.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 357, rewrote the section, reducing former subsection (2), relating to the membership and functionality of the Idaho education network program and resource council, to present subsection (5).

Effective Dates.
Section 4 of S.L. 2010, ch. 357 declared an emergency. It became law without the signature of the governor. Approved April 12, 2010.

33-129. Matching grants for science education programs — Grant criteria. — The state department of education shall administer a program of matching grants to encourage the expansion or maintenance of science education programs in the state of Idaho. Matching grants shall only be made to nonprofit corporations incorporated or registered in the state of Idaho and which shall have conducted such a science education program for a minimum of one (1) year. Grants shall require the applicant to provide at least one-half (1/2) of the financial support for the science education program with money or in-kind contributions.

"Science education programs" include, but are not limited to, demonstration programs intended to encourage knowledge of and interest in the disciplines of science among Idaho's elementary and secondary school students.

The state department of education shall administer this program with such funds as are appropriated to the science education program. Competing grant applications shall be evaluated and funding decisions shall be made based upon the department's judgment as to the probable effectiveness of the various proposals in furthering the purposes of this act.

History.
I.C., § 33-129, as added by 1991, ch. 139, § 3, p. 330.

STATUTORY NOTES

Compiler's Notes.
This section was repealed by S.L. 2011, ch. 247, effective April 8, 2011. The repeal by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 repeal became null and void, and this section returned to its pre-2011 provisions.

33-131. Definitions — Tribal school — Tribal education authority. — (1) "Tribal school" means an institution with an educational program that has as its primary purpose providing education in any grade or grades from kindergarten to twelfth grade and that is controlled by the elected governing body of a federally recognized American Indian tribe in Idaho or by a tribal education authority established under the laws of a federally recognized American Indian tribe in Idaho.

(2) "Tribal educational authority" means the authorized governmental

agency of a federally recognized Indian tribe, as defined in 25 U.S.C. section 450b, that is primarily responsible for:

(a) Regulating, administering or supervising the formal education of tribal members;

(b) Facilitating tribal control in all matters relating to the education of Indian children;

(c) Providing for the development and coordinated education programs, including all preschool, elementary, secondary and higher or vocational programs, funded by the United States bureau of Indian affairs and encouraging tribal cooperation and coordination with entities carrying out all educational programs receiving financial support from other general agencies, state agencies or private entities; and

(d) Providing for the development and enforcement of tribal education codes relating to the education of Indian children, including tribal education policies and tribal standards applicable to curriculum, personnel, students, facilities and support programs.

History.
I.C., § 33-131, as added by 2010, ch. 282, § 1, p. 759.

STATUTORY NOTES

Compiler's Notes.
Section 1 of S.L. 2010, ch. 181 and section 1 of S.L. 2010, ch. 282 enacted sections designated as § 33-131. The version of § 33-131 enacted by S.L. 2010, ch. 181 was redesignated by the compiler as § 33-132. That redesignation was made permanent by S.L. 2011, ch. 151, § 13.

33-132. Local school boards — Internet use policy required. — (1) As a condition for receiving moneys from the state general fund, each local school district shall file an acceptable internet use policy with the state superintendent of public instruction no later than August 1, 2011, or within one (1) year after the creation of a new district, whichever is later, and every five (5) years thereafter. Such policy shall be approved by the district's board of trustees and shall contain, but not be limited to, provisions that:

(a) Prohibit and prevent the use of school computers and other school owned technology-related services from sending, receiving, viewing or downloading materials that are deemed to be harmful to minors, as defined by section 18-1514, Idaho Code; and

(b) Provide for the selection of technology for the local district's computers to filter or block internet access to obscene materials, materials harmful to minors and materials that depict the sexual exploitation of a minor, as defined in chapter 15, title 18, Idaho Code; and

(c) Establish appropriate disciplinary measures to be taken against persons violating the policy provided for in this section; and

(d) Include a component of internet safety for students that is integrated into the district's instructional program; and

(e) Inform the public that administrative procedures have been adopted to enforce the policy provided for in this section and to handle complaints

about such enforcement, and that such procedures are available for review at the district office.

(2) The policy provided for in subsection (1) of this section may include terms, conditions and requirements deemed appropriate by the district's board of trustees including, but not limited to, requiring written parental authorization for internet use by minors or differentiating acceptable uses among elementary, middle and high school students.

(3) The district's superintendent is hereby authorized to take reasonable measures to implement and enforce the provisions of this section.

History.
I.C., § 33-131, as added by 2010, ch. 181, § 1, p. 370; am. 2011, ch. 151, § 13, p. 414.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 151, redesignated this section from § 33-131.

Compiler's Notes.
Section 1 of S.L. 2010, ch. 181 and section 1 of S.L. 2010, ch. 282 enacted sections designated as § 33-131. The version of § 33-131 enacted by S.L. 2010, ch. 181 was redesignated by the compiler as § 33-132. That redesignation was made permanent by S.L. 2011, ch. 151, § 13.

CHAPTER 2

ATTENDANCE AT SCHOOLS

SECTION.
33-202. School attendance compulsory.
33-206. Habitual truant defined.
33-207. Proceedings against parents or guardians.
33-212. Educational opportunity for military children. [Repealed.]

33-202. School attendance compulsory. — The parent or guardian of any child resident in this state who has attained the age of seven (7) years at the time of the commencement of school in his district, but not the age of sixteen (16) years, shall cause the child to be instructed in subjects commonly and usually taught in the public schools of the state of Idaho. To accomplish this, a parent or guardian shall either cause the child to be privately instructed by, or at the direction of, his parent or guardian; or enrolled in a public school or public charter school, including an on-line or virtual charter school or private or parochial school during a period in each year equal to that in which the public schools are in session; there to conform to the attendance policies and regulations established by the board of trustees, or other governing body, operating the school attended.

History.
1963, ch. 13, § 25, p. 27; am. 1992, ch. 243, § 1, p. 721; am. 2009, ch. 103, § 2, p. 316.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 103, at the beginning of the last sentence, substituted the language beginning "To accomplish this"

and ending "or virtual charter school or" for "Unless the child is otherwise comparably instructed, the parent or guardian shall cause the child to attend a public."

33-206. Habitual truant defined. — (1) An habitual truant is:

(a) Any public school pupil who, in the judgment of the board of trustees, or the board's designee, repeatedly has violated the attendance regulations established by the board; or

(b) Any child whose parents or guardians, or any of them, have failed or refused to cause such child to be instructed as provided in section 33-202, Idaho Code.

(2) A child who is an habitual truant shall come under the purview of the juvenile corrections act if he or she was within the age of compulsory attendance at the time of the violations.

History.
1963, ch. 13, § 29, p. 27; am. 2002, ch. 348, § 2, p. 994; am. 2005, ch. 60, § 1, p. 217; am. 2010, ch. 278, § 1, p. 718.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 278, in paragraph (1)(a), inserted "or the board's designee"; and in subsection (2), substituted "was within the age" for "is within the age" and added "at the time of the violations."

33-207. Proceedings against parents or guardians. — (1) Whenever the parents or guardians of any child between the ages of seven (7) years, as qualified in section 33-202, Idaho Code, and sixteen (16) years, have failed, neglected or refused to place the child in school as provided in this chapter or to have the child instructed as defined in section 33-202, Idaho Code, or knowingly have allowed a pupil to become an habitual truant, proceedings shall be brought against such parent or guardian under the provisions of the juvenile corrections act or as otherwise provided in subsection (2) of this section.

(2) Whenever it is determined by the board of trustees of any school district that a child enrolled in public school is an habitual truant, as defined in section 33-206, Idaho Code, an authorized representative of the board shall notify in writing the prosecuting attorney in the county of the child's residence. Proceedings may be brought directly against any parent or guardian of a public school pupil who is found to have knowingly allowed such pupil to become an habitual truant, and such parent or guardian shall be guilty of a misdemeanor.

(3) Whenever it is determined by the board under provisions providing due process of law for the student and his or her parents that the parents or guardians of any child not enrolled in a public school are failing to meet the requirements of section 33-202, Idaho Code, an authorized representative of the board shall notify in writing the prosecuting attorney in the county of the pupil's residence and recommend that a petition shall be filed in the magistrates division of the district court of the county of the pupil's residence, in such form as the court may require under the provisions of section 20-510, Idaho Code.

History.
1963, ch. 13, § 30, p. 27; am. 2004, ch. 23, § 5, p. 25; am. 2005, ch. 60, § 2, p. 217; am. 2009, ch. 103, § 3, p. 316.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 103, designated the first paragraph as subsection (1), and therein substituted "have the child instructed as defined in section 33-202, Idaho Code" for "have the child comparably instructed."

33-212. Educational opportunity for military children. [Repealed.]

Repealed by S.L. 2013, ch. 301, § 1, effective July 1, 2013. For comparable provisions, see § 33-5701.

History.
I.C., § 33-212, as added by 2010, ch. 54, § 1, p. 103.

CHAPTER 3

SCHOOL DISTRICTS

SECTION.
33-307. Correcting or altering school district boundaries.
33-308. Excision and annexation of territory.
33-309. Lapsed districts — Annexation.
33-311. Plan of consolidation submitted to electors.
33-312. Division of school district.
33-313. Trustee zones.
33-317. Cooperative service agency — Powers — Duties — Limitations.
33-317A. Legislative intent — Cooperative service agency — School plant facility levy.
33-319. Rural school districts — Rural public charter schools.
33-351. Subdistricts — Authority to establish — Election.
33-354. Indebtedness — Bond issues.
33-356. School building design and energy efficiency.
33-357. Creation of internet based expenditure website.

33-307. Correcting or altering school district boundaries. — (1) Whenever the state board of education shall find that school district boundaries should be corrected or altered, because of error in the legal description of the boundaries of any school district, or for any other reason, including, but not limited to:

(a) Any part of the area of the state is not included within the area of a school district; or

(b) Is included in more than one (1) school district; or

(c) The approval in any school election involving the excision and annexation of territory, or the consolidation of school districts, the division of a school district, or the lapse of a school district; then

the superintendent of public instruction shall make an appropriate order including an omitted area into any school district, or districts, or correcting or altering the boundaries of the districts, in such manner as, in his judgment, is just and proper.

(2) A copy of any such order shall be sent by the state department of education to the board of trustees of any school district affected by the order, which shall notify the state tax commission and the county assessor and

county recorder in accordance with the provisions of section 63-215, Idaho Code.

(3) Within thirty (30) days of receipt of the order, the state tax commission and the county assessor shall correct or alter the legal description of the school district or districts, as the same may appear in their respective records. The state tax commission shall notify the board of trustees of the affected school district and the state department of education that the county records have been corrected as ordered effective upon such notification. In the case of either the consolidation or division of a school district, the proposal shall become effective the first day of July next following the date of the order.

(4) The state board of education may promulgate rules to govern the procedures for correcting or altering school district boundaries.

History.
1963, ch. 13, § 37, p. 27; am. 1973, ch. 9, § 1, p. 21; am. 1980, ch. 38, § 1, p. 65; am. 1998, ch. 244, § 1, p. 803; am. 2009, ch. 107, § 1, p. 339.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 107, rewrote the section, revising provisions relating to the correction or alteration of school district boundaries and authorizing the state board of education to promulgate certain rules.

33-308. Excision and annexation of territory. — (1) A board of trustees of any school district including a specially chartered school district, or one-fourth (1/4) or more of the school district electors, residing in an area of not more than fifty (50) square miles within which there is no schoolhouse or facility necessary for the operation of a school district, may petition in writing proposing the annexation of the area to another and contiguous school district.

(2) Such petition shall be in duplicate, one (1) copy of which shall be presented to the board of trustees of the district from which the area is proposed to be excised, and the other to the board of trustees of the district to which the area is proposed to be annexed. The petition shall contain:

(a) The names and addresses of the petitioners;

(b) A legal description of the area proposed to be excised from one (1) district and annexed to another contiguous district. Such legal description shall be prepared by a licensed attorney, licensed professional land surveyor or licensed professional engineer professionally trained and experienced in legal descriptions of real property;

(c) Maps showing the boundaries of the districts as they presently appear and as they would appear should the excision and annexation be approved;

(d) The names of the school districts from and to which the area is proposed to be excised and annexed;

(e) A description of reasons for which the petition is being submitted; and

(f) An estimate of the number of children residing in the area described in the petition.

(3) The board of trustees of each school district, no later than ten (10)

days after its first regular meeting held subsequent to receipt of the petition, shall transmit the petition, with recommendations, to the state department of education.

(4) The state board of education shall approve the proposal provided:

(a) The excision and annexation is in the best interests of the children residing in the area described in the petition; and

(b) The excision of the territory, as proposed, would not leave a school district with a bonded debt in excess of the limit then prescribed by law.

If either condition is not met, the state board shall disapprove the proposal. The approval or disapproval shall be expressed in writing to the board of trustees of each school district named in the petition.

(5) If the state board of education shall approve the proposal, it shall be submitted to the school district electors residing in the area described in the petition, at an election held in the manner provided in chapter 14, title 34, Idaho Code. Such election shall be held on the date authorized in section 34-106, Idaho Code, which is nearest to sixty (60) days after the state board approves the proposal.

(6) At the election there shall be submitted to the electors having the qualifications of electors in a school district bond election and residing in the area proposed to be annexed:

(a) The question of whether the area described in the petition shall be excised from school district no. () and annexed to contiguous school district no. (); and

(b) The question of assumption of the appropriate proportion of any bonded debt, and the interest thereon, of the proposed annexing school district.

(7) If a majority of the school district electors in the area described in the petition, voting in the election, shall vote in favor of the proposal to excise and annex the said area, and if in the area the electors voting on the question of the assumption of bonded debt and interest have approved such assumption by the proportion of votes cast as is required by section 3, article VIII, of the constitution of the state of Idaho, the proposal shall carry and be approved. Otherwise, it shall fail.

(8) If the proposal shall be approved by the electors in the manner prescribed, the board of canvassers shall thereupon promptly notify the state department of education and the affected school districts of such results. The superintendent of public instruction shall make an appropriate order for the boundaries of the affected school districts to be altered, and the legal descriptions of the school districts shall be altered, as prescribed in section 33-307, Idaho Code.

History.

1963, ch. 13, § 38, p. 27; am. 1998, ch. 244, § 2, p. 803; am. 2009, ch. 107, § 2, p. 339; am. 2009, ch. 341, § 24, p. 993; am. 2010, ch. 215, § 1, p. 482.

STATUTORY NOTES

Amendments.

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 107, in subsection (3), substituted "department" for "board"; and rewrote subsection (8), which formerly read: "If the proposal shall be approved by the electors in the manner prescribed, the state board of education shall make an appropriate order for the boundaries of the affected school districts to be altered; and the legal descriptions of the school districts shall be corrected as prescribed in section 33-307(2), Idaho Code."

The 2009 amendment, by ch. 341, in subsection (5), updated the chapter and title reference in the first sentence and, in the second sentence, substituted "shall be held on the date authorized in section 34-106, Idaho Code, which is nearest to sixty (60) days after" for "shall be held within sixty (60) days after."

The 2010 amendment, by ch. 215, added the last sentence in paragraph (2)(b).

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 2 of S.L. 2010, ch. 215 provided that the act should take effect on and after January 1, 2011.

33-309. Lapsed districts — Annexation. — (1) If the state board of education shall find any school district:

(a) Has not operated its school for a period of one (1) school year;

(b) In which the average daily attendance during each term of not less than seven (7) months in the two (2) school years last past has been less than five (5) pupils; or

(c) For a period of not less than one (1) year last past has had an insufficient number of members on its board of trustees lawfully to conduct the business of the district;

the state board may enter its order declaring any such district to be lapsed, and which district shall lapse as of the first day of July next following the date of said order.

(2) Upon entering its order declaring a school district lapsed pursuant to subsection (1) of this section, the state board shall designate some proper person a hearing officer to conduct a public hearing or hearings on the matter of annexing the lapsed district to a school district or districts contiguous thereto. The state board shall cause notice of such hearing or hearings to be published in a newspaper of general circulation in the area and the notice shall state the time and place of the hearing or hearings and the subject matter involved.

(3) Upon concluding any hearing or hearings the hearing officer shall make his report and recommendation to the state board, and the state board shall thereafter order the lapsed area annexed to such contiguous district or districts as in the judgment of the state board seems equitable and just. Any such annexation shall be effective as of the fifteenth day of August next following the date of the order of annexation.

(4) Whenever there is any outstanding unpaid bonded debt owed by the lapsed district, the state board shall, in its order of annexation, require the district, or one (1) of the districts, to which the lapsed area is annexed, to keep and maintain the bond register and to pay the principal and interest, when the same are due, out of the proceeds of any levy made for that purpose. The said order of annexation shall also provide for the transfer, or apportionment, to the annexing district or districts of the property and current liabilities of the lapsed district as in the judgment of the state board is equitable and just; provided however, that if the lapsed district shall have excess of liquid assets over current liabilities, and if such lapsed district

shall have any outstanding unpaid bonded debt, then and in that event such excess shall be ordered transferred to a fund for the payment of the principal of and interest on such debt.

(5) When annexation has been completed, as hereinabove authorized, the state board shall give notice of such annexation to the officers of the lapsed district, if any there be, and to the board of county commissioners of any county in which shall lie any district, the boundaries of which have been changed by the annexation of the lapsed area. The notice to any board of county commissioners shall be accompanied by a legal description of the boundaries of the district or districts as changed by the annexation.

History.
1963, ch. 13, § 39, p. 27; am. 2009, ch. 88, § 1, p. 257.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 88, added the numerical subsection designations; in subsection (1)(c), substituted "the state board may enter its order" for "the said state board of education shall enter its order"; in subsection (2), added "Upon entering its order declaring a school district lapsed pursuant to subsection (1) of this section"; and in subsections (2) through (5), deleted "of education" following "state board."

33-311. Plan of consolidation submitted to electors. — The state board of education may approve or disapprove any plan proposing consolidation, and if it approves the same the department of education shall give notice thereof to the board of trustees of each school district proposing to consolidate and to the board of county commissioners in each county in which the proposed consolidated district would lie. Notice to the board of county commissioners shall include the legal description of the boundaries of the proposed consolidated district and a brief statement of the approved proposal, and shall be accompanied by a map of the proposed consolidated district.

Not more than ten (10) days after receiving the notice from the state department of education, each board of county commissioners receiving such notice shall enter the order calling for an election on the question of approving or disapproving, and shall cause notice of such election to be published. The notice shall be published, the election shall be held and conducted and its results canvassed, in the manner and form of title 34, Idaho Code.

If the qualified school electors of any one (1) district proposing to consolidate, and voting in the election, shall constitute a majority of all such electors voting in the entire area of the proposed consolidated district, the proposed consolidation shall not be approved unless a majority of such electors in such district, voting in the election, and a majority of such electors in each of the remaining districts, voting in the election, shall approve the proposed consolidation.

If the qualified school electors in no one (1) of the districts proposing to consolidate, and voting in the election, constitute a majority of all such electors voting in the entire area of the proposed consolidated district, the

proposed consolidation shall not be approved unless a majority of all such electors in each district, voting in the election, shall approve the proposed consolidation.

In any plan of consolidation the existing bonded debt of any district or districts proposing to consolidate, shall not become the obligation of the proposed consolidated school district. The debt or debts shall remain an obligation of the property within the districts proposing the consolidation. Upon voter approval of the proposed consolidation, the districts proposing to consolidate shall become subdistricts of the new district as if they had been created under the provisions of section 33-351, Idaho Code. The subdistricts shall be called bond redemption subdistricts. The powers and duties of such bond redemption subdistricts shall not include authority to incur new indebtedness within the subdistricts.

When a consolidation is approved, as hereinabove prescribed, a new school district is thereby created. The board of canvassers shall thereupon promptly notify the state department of education and the affected school districts of such result. The superintendent of public instruction shall make an appropriate order showing the creation of the district, a legal description of its boundaries, and the legal descriptions of the boundaries of the affected school districts as prescribed in section 33-308, Idaho Code.

History.

1963, ch. 13, § 41, p. 27; am. 1985, ch. 237, § 1, p. 562; am. 1989, ch. 296, § 2, p. 724; am. 2009, ch. 107, § 3, p. 339; am. 2009, ch. 341, § 25, p. 993.

STATUTORY NOTES

Amendments.

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 107, in the first sentence in the first paragraph, substituted "the department of education" for the second occurrence of "it"; in the first sentence in the second paragraph, substituted "department" for "board"; and rewrote the last paragraph, which formerly read: "When a consolidation is approved, as hereinabove prescribed, a new school district is thereby created, and the board of county commissioners of any county in which the consolidated district lies shall enter its order showing the creation of the district and a legal description of its boundaries."

The 2009 amendment, by ch. 341, in the second paragraph, twice deleted "posted and" preceding "published" and substituted "of title 34, Idaho Code" for "of sections 33-401 through 33-406, Idaho Code."

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-312. Division of school district. — A school district may be divided so as to form not more than two (2) districts each of which must have contiguous boundaries, in the manner hereinafter provided, except that any district which operates and maintains a secondary school or schools shall not be divided unless the two (2) districts created out of the division shall each operate and maintain a secondary school or schools immediately following such division.

A proposal to divide a school district may be initiated by its board of trustees and submitted to the state department of education. Such proposal shall contain all of the information required in a proposal to consolidate school districts as may be relevant to a proposal to divide a school district.

It shall also show the manner in which it is proposed to divide or apportion the property and liabilities of the district, the names and numbers of the proposed new districts, and legal description of the proposed trustee zones.

Before submitting any proposal to divide a school district, the board of trustees shall hold a hearing or hearings on the proposal within the district. Notice of such hearing or hearings shall be posted by the clerk of the board of trustees in not less than three (3) public places within the district, one (1) of which places shall be at or near the main door of the administrative offices of the school district, for not less than ten (10) days before the date of such hearing or hearings.

The department of education shall present any such proposal to the state board of education, which may approve or disapprove the proposal, and the department of education shall give notice thereof in the manner of a proposal to consolidate school districts; except, that the state board of education shall not approve any proposal which would result in a district to be created by the division having or assuming a bonded debt in an amount exceeding the limitations imposed by law, or which would leave the area of any city in more than one (1) school district.

If the state board of education shall approve the proposal to divide the district, notice of the election shall be published and the election shall be held subject to the provisions of section 34-106, Idaho Code. The election shall be conducted, and the ballots shall be canvassed, according to the provisions of title 34, Idaho Code. The division shall be approved only if a majority of all votes cast at said special election by the school district electors residing within the entire existing school district and voting in the election are in favor of the division of such district, and a majority of all votes cast at said special election by the qualified voters within that portion of the proposed new district having a minority of the number of qualified voters, such portion to be determined by the number of votes cast in each area which is a contemplated new district, are in favor of the division of the district, and upon such approval two (2) new school districts shall be thereby created. The organization and division of all school districts which have divided since June 30, 1963, are hereby validated.

If the division is approved, as herein provided, two (2) new school districts are thereby created. The board of canvassers shall thereupon promptly notify the state department of education and the affected school districts of such result. The superintendent of public instruction shall make an appropriate order showing the creation of the districts and a legal description of the boundaries, and the legal descriptions of the affected school districts shall be altered, as prescribed in section 33-307, Idaho Code.

History.

1963, ch. 13, § 42, p. 27; am. 1963, ch. 175, § 1, p. 501; am. 1965, ch. 272, § 1, p. 699; am. 1969, ch. 152, § 1, p. 478; am. 2009, ch. 107, § 4, p. 339; am. 2009, ch. 341, § 26, p. 993; am. 2011, ch. 151, § 14, p. 414.

STATUTORY NOTES

Amendments.

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 107, in the first sentence in the second paragraph, substituted "state department of education" for "state board of education"; in the fourth paragraph, substituted the language beginning "The department of education" and ending "shall give notice" for "The state board of education may approve or disapprove any such proposal submitted to it and shall give notice"; and rewrote the last paragraph, which formerly read: "If the division be approved, as herein provided, the board of canvassers shall thereupon notify the state board of education and the trustees of the district which has been divided. The state board shall give notice to the board of county commissioners of any county in which the newly created districts may lie."

The 2009 amendment, by ch. 341, in the first paragraph, substituted "contiguous boundaries" for "continuous boundaries"; in the fourth paragraph, deleted "or village" following "city"; in the fifth paragraph, subdivided and rewrote the first sentence; and in the last paragraph, inserted "county," and substituted "shall certify the results to the district and the district shall report the results to the state board" for "shall thereupon notify the state board."

The 2011 amendment, by ch. 151, in the first sentence in the last paragraph, deleted "county certify the results to the district and the district shall report the results to" following "as herein provided."

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-313. Trustee zones. — (1) Each elementary school district shall be divided into three (3) trustee zones and each other school district shall be divided into no fewer than five (5) nor more than nine (9) trustee zones according to the provisions of section 33-501, Idaho Code. A school district that has had a change in its district boundaries because of consolidation on and after January 1, 2008, shall divide trustee zones so that each former district in the new district shall not be split into different trustee zones, unless the provisions of subsection (2) of this section cannot be satisfied.

(2) Any proposal to define the boundaries of the several trustee zones in each such school district shall include the determination, where appropriate, of the number of trustee zones in such district, and the date of expiration of the term of office for each trustee. The boundaries of the several trustee zones in each such school district shall be defined and drawn so that, as reasonably as may be, each such zone shall have approximately the same population.

(3) Whenever the area of any district has been enlarged by the annexation of all or any part of another district, or by the correction of errors in the legal description of school district boundaries, any such additional territory shall be included in the trustee zone or zones contiguous to such additional territory until such time as the trustee zones may be redefined and changed. Trustee zones may be redefined and changed, but not more than once every five (5) years, in the manner hereinafter provided.

(4) A proposal to redefine and change trustee zones of any district may be initiated by its board of trustees and shall be initiated by its board of trustees at the first meeting following the report of the decennial census, and submitted to the state board of education, or by petition signed by not less than fifty (50) school electors residing in the district, and presented to the board of trustees of the district. Within one hundred twenty (120) days following the decennial census or the receipt of a petition to redefine and change the trustee zones of a district the board of trustees shall prepare a proposal for a change which will equalize the population in each zone in the district and shall submit the proposal to the state board of education. Any proposal shall include a legal description of each trustee zone as the same

would appear as proposed, a map of the district showing how each trustee zone would then appear, and the approximate population each would then have, should the proposal to change any trustee zones become effective.

(5) Within sixty (60) days after it has received the said proposal the state board of education may approve or disapprove the proposal to redefine and change trustee zones and shall give notice thereof in writing to the board of trustees of the district wherein the change is proposed. Should the state board of education disapprove a proposal the board of trustees shall within forty-five (45) days submit a revised proposal to the state board of education. Should the state board of education approve the proposal, the trustee zones shall be changed in accordance with the proposal and a copy of the legal description of each trustee zone and map of the district showing how each trustee zone will appear shall be filed with the county clerk.

(6) At the next regular meeting of the board of trustees following the approval of the proposal the board shall appoint from its membership a trustee for each new zone to serve as trustee until that incumbent trustee's term expires. If the current board membership includes two (2) incumbent trustees from the same new trustee zone, the board will select the incumbent trustee with the most seniority as a trustee to serve the remainder of his term. If both incumbent trustees have equal seniority, the board will choose one (1) of the trustees by the drawing of lots. If there is a trustee vacancy in any of the new zones, the board of trustees shall appoint from the patrons resident in that new trustee zone, a person from that zone to serve as trustee until the next annual meeting. At the annual election a trustee shall be elected to serve during the term specified in the election for the zone. The elected trustee shall assume office at the annual meeting of the school district next following the election.

History.

1963, ch. 13, § 43, p. 27; am. 1967, ch. 403, § 1, p. 1214; am. 1969, ch. 412, § 1, p. 1143; am. 1973, ch. 125, § 1, p. 236; am. 1979, ch. 271, § 1, p. 705; am. 1984, ch. 94, § 1, p. 218; am. 1989, ch. 121, § 1, p. 267; am. 1990, ch. 31, § 1, p. 46; am. 1994, ch. 182, § 1, p. 599; am. 2001, ch. 163, § 1, p. 572; am. 2008, ch. 351, § 1, p. 968; am. 2009, ch. 341, § 27, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in subsection (5), added "and a copy of the legal description of each trustee zone and map of the district showing how each trustee zone will appear shall be filed with the county clerk"; and, in subsection (6), deleted "three (3) year" preceding the first two occurrences of "term."

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-317. Cooperative service agency — Powers — Duties — Limitations. — (1) Two (2) or more school districts may join together for educational purposes to form a service agency to purchase materials and/or provide services for use individually or in combination. The cooperative service agency thus formed shall be empowered to adopt bylaws, and act as a body corporate and politic with such powers as are assigned through its bylaws but limited to the powers and duties of local school districts. In its

corporate capacity, this agency may sue and be sued and may acquire, hold and convey real and personal property necessary to its existence. The employees of the service agency shall be extended the same general rights, privileges and responsibilities as comparable employees of a school district. The cooperative service agency may elect to be its own fiscal agent for the purposes of providing an alternative school program, with the concurrence of the school districts for which it provides such services. In doing so the educational support program payments made pursuant to section 33-1002, Idaho Code, that would have been distributed to the school district acting as the fiscal agent, shall instead be distributed to the cooperative service agency.

(2) A properly constituted cooperative service agency may request from its member school districts funding to be furnished by a tax levy not to exceed one-tenth of one percent (.1%) for a period not to exceed ten (10) years by such member school districts. Such levy must be authorized by an election held subject to the provisions of section 34-106, Idaho Code, and be conducted in each of the school districts pursuant to chapter 14, title 34, Idaho Code, and approved by a majority of the district electors voting in such election. Moneys received by the member school districts from this source shall be transferred to the cooperative service agency upon receipt of billing from the agency. Excess revenue over billing must be kept in a designated account by the district, with accrued interest, and may only be spent as budgeted by the agency.

(3) For the purpose of constructing and maintaining facilities of a cooperative service agency, in addition to the levy authorized in subsection (2) of this section, a properly constituted cooperative service agency may request from its member school districts additional funding to be furnished by a tax levy not to exceed four-tenths of one percent (.4%) for a period not to exceed ten (10) years. Such levy must be authorized by an election held subject to the provisions of section 34-106, Idaho Code, and be conducted in each of the school districts pursuant to chapter 14, title 34, Idaho Code, and approved by sixty-six and two-thirds percent (66 2/3%) of the district electors voting in such election. If one (1) or more of the member districts fails to approve the tax levy in such election, the cooperative service agency may construct the facility through the support of the member districts approving the levy, but in no event shall the levy limits authorized in this subsection (3) be exceeded. Nothing shall prevent a member district that initially failed to approve the levy from conducting a subsequent election, held pursuant to section 34-106, Idaho Code, to authorize that district's participation in construction of the facility. Electors of the districts may approve continuation of such levy for an additional ten (10) years at an election held for that purpose. There is no limit on the number of elections which may be held for the purpose of continuing the levy authorized under this subsection (3) for an additional ten (10) years. The administration and accounting of moneys received by imposition of the levy shall be the same as provided in subsection (2) of this section.

History.

1967, ch. 362, § 3, p. 1042; am. 1972, ch. 105, § 1, p. 216; am. 1985, ch. 107, § 2, p. 191; am. 1989, ch. 17, § 1, p. 19; am. 1991, ch. 111, § 1, p. 238; am. 2006, ch. 306, § 1, p. 945; am. 2008, ch. 104, § 1, p. 287; am. 2009, ch. 220, § 1, p. 684; am. 2009, ch. 227, § 1, p. 708; am. 2009, ch. 341, § 28, p. 993.

STATUTORY NOTES

Amendments.

This section was amended by three 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 220, substituted "four-tenths of one percent (.4%)" for "one-tenth of one percent (.1%)" in the first sentence in subsection (3).

The 2009 amendment, by ch. 227, added the last two sentences in subsection (1).

The 2009 amendment, by ch. 341, in the second sentences in subsections (2) and (3), inserted "subject to the provisions of section 34-106, Idaho Code, and be conducted," and updated the chapter and title reference; and, in the fourth sentence in subsection (3), substituted "section 34-106" for "chapter 4, title 33."

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-317A. Legislative intent — Cooperative service agency — School plant facility levy. — (1) For the purpose of constructing and maintaining facilities of a cooperative service agency, a properly constituted cooperative service agency may request from its member school districts additional funding to be furnished by a tax levy not to exceed four-tenths of one percent (.4%) of market value for assessment purposes in each year, as such valuation existed on December 31, of the previous year, for a period not to exceed three (3) years. Such levy shall be authorized by an election held in each of the school districts pursuant to chapter 4, title 33, Idaho Code. The question of a levy to be submitted to the electors of each member school district and the notice of such election shall state the dollar amount proposed to be collected each year during the period of years in each of which the collection is proposed to be made, the percentage of votes in favor of the proposal which are needed to approve the proposed dollar amount to be collected, and the purposes for which such funds shall be used. Said notice shall be given, the election shall be conducted and the returns canvassed as provided in chapter 4, title 33, Idaho Code; and the dollar amount to be collected shall be approved only if:

(a) Fifty-five percent (55%) of the district electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities of less than two-tenths of one percent (.2%) of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election;

(b) Sixty percent (60%) of the district electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities of two-tenths of one percent (.2%) or more and less than three-tenths of one percent (.3%) of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election; or

(c) Two-thirds (2/3) of the district electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities of three-tenths of one percent (.3%) or more of market value for assess-

ment purposes as such valuation existed on December 31 of the year immediately preceding the election.

If the question be approved, each member school district of the cooperative service agency may make a levy, not to exceed four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, in each year for which the collection was approved, sufficient to collect the dollar amount approved and may again submit the question at the expiration of the period of such levy, for the dollar amount to be collected during each year, and the number of years which the board may at that time determine. Or, during the period approved at any such election, if such period be less than three (3) years or the levy be less than four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, the cooperative service agency may request that its member school districts submit to the qualified school district electors in the same manner as before, the question whether the number of years, not to exceed three (3), or the levy, or both, be increased, but not to exceed the maximum herein authorized. If such increase or increases be approved by the electors, the terms of such levy shall be in lieu of those approved in the first instance, but disapproval shall not affect any terms theretofore in effect.

(2) Physical construction may commence once moneys equal to the estimated cost of constructing the facility have been collected by the cooperative service agency, except that the cooperative service agency may commence physical construction before moneys equal to one hundred percent (100%) of the estimated cost of constructing the facility have been collected as long as language is included in the instructions to bidders reflecting the following:

(a) Providing notice of the funding method and schedule;

(b) Clearly stating that if all moneys are not collected according to the schedule provided, the contractor may not be paid in a timely manner and such contractor will have to await payment until the necessary moneys are collected, but in no event shall such contractor have to await payment longer than three (3) years from the date of the contractor's last pay request;

(c) Stating that the cooperative service agency accepts no liability and will pay no interest on unpaid balances;

(d) Stating that should an inability to pay occur after the fifty percent (50%) completion point of the project, the contractor must complete the project irrespective of payment status; and

(e) Stating that if an inability to pay occurs before the fifty percent (50%) completion point, the contractor has the option to suspend work, receiving no compensation for delay, and restart the project when funding becomes available.

(3) If one (1) or more of the member districts fails to approve the tax levy in such election, the cooperative service agency may construct the facility through the support of the member districts approving the levy, but in no event shall the levy limits authorized in this section be exceeded.

(4) Nothing shall prevent a member district that initially failed to approve the levy from conducting a subsequent election, held pursuant to

chapter 4, title 33, Idaho Code, to authorize that district's participation in construction of the facility.

(5) The administration and accounting of moneys received by imposition of the levy provided for in this section shall be the same as provided in section 33-317(2), Idaho Code.

History.
I.C., § 33-317A, as added by 2009, ch. 220, § 2, p. 684; am. 2011, ch. 189, § 1, p. 540.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 189, rewrote subsection (2), which formerly read: "No physical construction shall commence on any facility to be financed pursuant to the provisions of this section until the estimated cost of constructing such facility has been collected by the cooperative service agency."

33-319. Rural school districts — Rural public charter schools. — (1) A school district shall be considered a rural school district if it meets one (1) of the following two (2) criteria:

(a) There are fewer than twenty (20) enrolled students per square mile within the area encompassed by the school district's boundaries; or

(b) The county in which a plurality of the school district's market value for assessment purposes is located contains less than twenty-five thousand (25,000) residents, based on the most recent decennial United States census.

(2) A public charter school shall be considered a rural public charter school if the school district in which the public charter school is physically located meets the definition of a rural school district, pursuant to subsection (1) of this section. A public charter school that is also a virtual school shall be considered a rural public charter school if over fifty percent (50%) of its enrolled students reside within school districts that meet the definition of a rural school district pursuant to subsection (1) of this section.

History.
I.C., § 33-319, as added by 2009, ch. 239, § 1, p. 739.

33-351. Subdistricts — Authority to establish — Election. — The board of trustees of any school district which operates two (2) or more high schools may at any time, on its own motion or upon the filing with the board of trustees of a petition so requesting signed by not less than fifty (50) school electors, call an election to submit to the qualified electors of the school district the question of the creation of one (1) or more school subdistricts. Such election shall be called, the election shall be held subject to the provisions of section 34-106, Idaho Code, and shall be conducted pursuant to the provisions of chapter 14, title 34, Idaho Code. The proceedings calling such election shall set forth the boundaries of each proposed school subdistrict and shall provide for the submission of the question of the creation of each such school subdistrict to the qualified electors of the school district and to the qualified electors residing within the proposed boundaries of each

such school subdistrict. No proposition for the creation of a school subdistrict shall be determined to have carried unless such proposition shall receive a majority of the votes cast on such proposition by the qualified electors residing within the boundaries of the school district and a majority of the votes cast on such proposition by the qualified electors residing within the boundaries of the proposed school subdistrict. Whenever the creation of more than one (1) school subdistrict is submitted at the same election, separate ballots and separate propositions shall be used in voting on the question of creating each school subdistrict.

History.
I.C., § 33-351, as added by 1986, ch. 61, § 1, p. 177; am. 2009, ch. 341, § 29, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, in the second sentence, inserted "subject to the provisions of section 34-106, Idaho Code" and updated the chapter and title reference.

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-354. Indebtedness — Bond issues. — School subdistricts may incur debt and issue bonds for the purpose of acquiring, purchasing or improving a school site or sites, acquiring or constructing new schoolhouses, remodeling existing buildings, constructing additions thereto, including all necessary furnishings and equipment, and all lighting, heating, ventilation, sanitation facilities and appliances necessary to operate the buildings of the new school subdistrict. The governing body of a school subdistrict may submit to the qualified electors of the school subdistrict the question of whether the governing body of the school subdistrict shall be empowered to issue negotiable bonds of the school subdistrict in an amount and for a period of time to be named in the notice of election. Notice of the bond election shall be given, the election shall be conducted and the returns thereof canvassed and the qualifications of electors voting or offering to vote shall be as provided in title 34, Idaho Code. The question of the issuance of such bonds shall be approved only if the percentage of votes cast at such election were cast in favor thereof as that which is now, or may hereafter be, set by the constitution of the state of Idaho. All such bonds shall be authorized, issued and sold pursuant to the provisions of sections 33-1107 through 33-1121, Idaho Code. No bonds of a school subdistrict may be issued, however, if the issuance of such bonds would cause the percentage of market value for assessment purposes of taxable property within the boundaries of the school subdistrict represented by the aggregate outstanding indebtedness of the school subdistrict, when added to the percentage of the assessed valuation of taxable property represented by the aggregate outstanding indebtedness of the school district within which the school subdistrict lies, to exceed five percent (5%). As used in the preceding sentence hereof, "market value for assessment purposes," "aggregate outstanding indebtedness" and "issuance" shall have the same meanings as set forth in section 33-1103, Idaho Code. Upon the approval of the issuance of

such bonds, the same may be issued by the governing body of the school subdistrict on behalf of the school subdistrict at any time within two (2) years from the date of such election. Wherever in title 34, Idaho Code, and in sections 33-1107 through 33-1121, Idaho Code, reference is made to "school district"; for purposes of this chapter it shall be deemed to refer to school subdistricts.

History.
I.C., § 33-354, as added by 1986, ch. 61, § 1, p. 177; am. 2009, ch. 341, § 30, p. 993; am. 2013, ch. 183, § 12, p. 437.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, in the first sentence, substituted "new schoolhouses" for "new school houses"; in the third and last sentences, substituted "title 34" for "sections 33-402 through 33-423"; and, in the last sentence, substituted "chapter" for "act."

The 2013 amendment, by ch. 183, substituted "sections 33-1107 through 33-1121" for "sections 33-1107 through 33-1125" in the fifth and last sentences.

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-356. School building design and energy efficiency. —
(1)(a) School districts may seek to qualify for a reduction in building replacement value calculation for qualified, newly constructed public school buildings pursuant to section 33-1019(4), Idaho Code.

(b) Each school district that seeks to qualify a newly constructed building for the building replacement value calculation provided for in section 33-1019(4), Idaho Code, shall use integrated design practices and fundamental commissioning in the design and construction of such building.

(c) Following the first year of operations of a building that was certified in accordance with the provisions of subsection (5)(a) of this section, the germane school district shall perform or cause to be performed an annual optimization review of the qualifying building. Such annual optimization review shall be performed in a manner that is consistent with rules promulgated pursuant to this section. Such school district shall thereafter perform or cause to be performed an annual optimization review each year it seeks to qualify such building for the building replacement value calculation provided in section 33-1019(4), Idaho Code.

(2) For purposes of this section, the following terms shall have the following meanings:

(a) "Fundamental commissioning" means the use of a third party to review building design, building system specifications and to specify and monitor preoccupancy system testing to ensure functional integration of specified systems and functional operation of systems at the completion of a project.

(b) "Integrated design" means a process to develop consensus among the project team and owner as to the energy savings and building performance goals of the project and to identify design strategies to achieve those goals, including documentation strategies for design decisions to ensure accurate implementation of design through construction.

(3) It shall be the duty and responsibility of the administrator of the

division of building safety to provide assistance to school districts to ensure school districts can access the technical and educational support needed to implement the processes of integrated design and fundamental commissioning. It shall further be the duty and responsibility of the administrator of the division of building safety to compile and cause to be made available to school districts a list of all third party building commissioning agents in Idaho and contiguous states. The administrator shall ensure that all commissioning agents that appear on such list are certified by the building commissioning association or other similar certifying entity. The administrator shall ensure that such list is updated annually.

(4) The administrator of the division of building safety is hereby authorized and directed to promulgate rules in accordance with the provisions of chapter 52, title 67, Idaho Code, that provide the guidance, education and technical information necessary for school districts to implement the processes of integrated design and fundamental commissioning. The administrator is authorized to expand upon the terms defined in subsection (2) of this section, and to provide additional definitions as needed. In addition, the administrator shall promulgate rules governing annual optimization review and evaluation of germane building systems to ensure optimal performance of such systems and maximum energy savings and building performance. Such rules shall include, but not be limited to, a definition for the minimum scope of work required for annual optimization.

(5)(a) The administrator of the division of building safety shall certify to the state department of education when a building has qualified for school building replacement value calculation exclusions as provided for in section 33-1019(4), Idaho Code. As part of such certification, the administrator shall state specifically the school building(s) and the square footage thereof that shall be excluded from the school building replacement value calculations.

(b) Following the first year of operations of a building that was certified in accordance with the provisions of subsection (5)(a) of this section, the administrator of the division of building safety shall certify to the state department of education when such building has undergone an annual optimization review as provided in subsection (1)(c) of this section. Such certification shall ensure that the qualifying building meets or exceeds the requirements of annual optimization review rules promulgated pursuant to subsection (4) of this section.

History.

I.C., § 33-356, as added by 2009, ch. 169, § 2, p. 512.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2009, ch. 169 provided: "Legislative Intent. It is the intent of the Legislature that:

"(1) Every dollar spent on energy costs in an Idaho public school is a dollar that is not spent in the direct education of students in the classroom. As energy costs increase, the diversion of funding away from the classroom will accelerate. The state has a primary interest in minimizing K-12 public school building energy costs since funding for energy comes directly from the state General Fund.

"(2) School districts recognize that funding

will always be limited and that efficient use of every dollar is vital to providing the highest possible level of educational services. It is apparent that designing and constructing more energy efficient buildings accrue cumulative benefits to both the state and to the school district. This is because any energy efficiency built into a new school building will save money each and every year of operation for the life of that school building. Small gains in energy efficiency result in large payoffs over the life of operations of a building.

"(3) This act provides an incentive for school districts to use certain design and construction processes for constructing high quality school buildings. Using two processes, integrated design and fundamental commissioning, will result in efficient design and construction implementation of higher performance new public school buildings. Using this design and construction process, it is the intent of this act to make energy efficiency a priority for our school districts in the design and construction of new public school buildings."

Compiler's Notes.

Section 4 of S.L. 2009, ch. 169 provided: "State Department of Education — Report. On or before July 1, 2018, the State Department of Education shall submit a report to the State Board of Education and the chairmen of the following legislative committees: Senate State Affairs; House Environment, Energy and Technology; Senate and House Education; and the Energy, Environment and Technology Interim Committee. Such report shall detail the extent to which public school districts have participated, implemented and benefited from the provisions of this act."

33-357. Creation of internet based expenditure website. — (1) As used in this section, unless otherwise required:

(a) "Education provider" means:

(i) A school district, including a specially chartered district organized and existing pursuant to law;

(ii) A cooperative services agency or intermediate school district;

(iii) A public charter school authorized pursuant to state law;

(iv) A publicly funded governmental entity established by the state for the express purpose of providing online courses.

(b) "Entity" means a corporation, association, union, limited liability company, limited liability partnership, grantee, contractor, local government or other legal entity, including a nonprofit corporation or an employee of the education provider.

(c) "Public record" shall have the same meaning as set forth in chapter 3, title 9, Idaho Code.

(2)(a) No later than December 1, 2011, each education provider shall develop and maintain a publicly available website where the education provider's expenditures are posted in a nonsearchable PDF format, a searchable PDF format, a spreadsheet or in a database format.

(b) The internet based website shall include the following data concerning all expenditures made by the education provider:

(i) The name and location or address of the entity receiving moneys;

(ii) The amount of expended moneys;

(iii) The date of the expenditure;

(iv) A description of the purpose of the expenditure, unless the expenditure is self-describing;

(v) Supporting contracts and performance reports upon which the expenditure is related when these documents already exist;

(vi) To the extent possible, a unique identifier for each expenditure;

(vii) The annual budget approved by the education provider's governing board, to be posted within thirty (30) days after its approval; and

(viii) Any current master labor agreements approved by the education provider's governing board.

(c) The expenditure data shall be provided in an open structured data format that may be downloaded by the user.

(d) The internet based website shall contain only information that is a public record or that is not confidential or otherwise exempt from public disclosure pursuant to state or federal law.

(3) The education provider shall:

(a) Update the expenditures contained on the internet based website at least monthly;

(b) Archive all expenditures, which shall remain accessible and on the internet based website for a number of years, consistent with state law regarding keeping and retention of records;

(c) Make the internet based website easily accessible from the main page of the education provider's website; and

(d) The website shall include those records beginning on the effective date of this act on July 1, 2011, and all data prior to that date shall be available by way of a public records request.

History.

I.C., § 33-357, as added by 2010, ch. 263, § 2, p. 665; am. 2013, ch. 94, § 1, p. 230.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 94, added paragraphs (vii) and (viii) in subsection (2)(b).

Legislative Intent.

Section 1 of S.L. 2010, ch. 263 provided "Legislative Intent. The Legislature finds that taxpayers should have easy access to the details of how our public schools are spending both taxpayer dollars and revenue raised from other sources. Access to this financial data in an electronic form should facilitate increasing transparency in public school financial matters. Therefore, it is the intent of the Legislature to direct each Idaho school district and education provider to create an internet based website to detail the expenditures of school districts and other education providers."

Compiler's Notes.

This section was amended by S.L. 2011, ch. 247, effective April 8, 2011. The amendment by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions before being amended again in 2013.

Effective Dates.

Section 3 of S.L. 2010, ch. 263 provided that the act should take effect on and after July 1, 2011.

CHAPTER 4

SCHOOL ELECTIONS

SECTION.

33-401. Legislative intent.
33-402. Notice requirements.
33-403. Conduct of elections. [Repealed.]
33-403A. Assistance to voter. [Repealed.]
33-403B. Spoiled ballots. [Repealed.]
33-403C. Challengers — Watchers. [Repealed.]
33-404. Places elections to be held.
33-405. Qualifications of school electors.
33-405A. Residence defined. [Repealed.]
33-405B. Challenge of voters. [Repealed.]
33-406. Absentee voting. [Repealed.]
33-406A. Challenging absentee elector's vote. [Repealed.]
33-407. Return and canvass of elections. [Repealed.]
33-408. Election contests — Grounds of contest. [Repealed.]
33-409. Bond election and levy increases — Time for filing — Validation of elections and bonds. [Repealed.]

SECTION.
33-410. Misconduct of judges. [Repealed.]
33-411. Jurisdiction — Election contests. [Repealed.]
33-412. Who may contest an election. [Repealed.]
33-413. Complaint and security for costs. [Repealed.]
33-414. Complaint — Specific allegations. [Repealed.]
33-415. Issuance of summons. [Repealed.]
33-416. Procedure in general. [Repealed.]
33-417. Voters to testify as to qualifications. [Repealed.]
33-418. Liability for costs. [Repealed.]
33-419. Form of judgment. [Repealed.]
33-420. Determination of tie vote. [Repealed.]
33-421. Election declared void. [Repealed.]
33-422. Appeal. [Repealed.]
33-423. Applicability of penal provisions. [Repealed.]
33-424. Initiating recall proceedings. [Repealed.]
33-428. Filing petitions — Time limitations. [Repealed.]
33-429. Petition — Form. [Repealed.]
SECTION.
33-430. Petition — Size. [Repealed.]
33-431. Number of signatures required. [Repealed.]
33-432. Canvassing petition for sufficiency of signatures — Notice. [Repealed.]
33-433. Verification and canvass of signatures — Procedure. [Repealed.]
33-434. Fixing date for recall election — Notice. [Repealed.]
33-435. Response to recall petition statement. [Repealed.]
33-436. Destruction of insufficient recall petition. [Repealed.]
33-437. Invalid names — Record of. [Repealed.]
33-438. Conduct of election — Form of ballot. [Repealed.]
33-439. Ascertaining the result — When recall effective. [Repealed.]
33-440. Enforcement provisions — Mandamus — Appeals. [Repealed.]
33-441. Violations by signers. [Repealed.]
33-442. Violations — Corrupt practices. [Repealed.]

33-401. Legislative intent. — The legislature finds that a comprehensive and integrated statutory scheme for the conduct of school elections is critical to the public's understanding of and confidence in the public school election system. It is therefore the intent of the legislature that the provisions of title 18, Idaho Code, and the provisions of title 34, Idaho Code, shall be fully applicable and shall govern all school elections. All school elections shall be administered by the clerk of the county wherein the district lies. Elections in a joint school district shall be conducted jointly by the clerks of the respective counties, and the clerk of the home county shall exercise such powers as are necessary to coordinate the election.

History.
I.C., § 33-401, as added by 1982, ch. 60, § 1, p. 106; am. 2009, ch. 341, § 31, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, in the second sentence, deleted "with the exception of chapter 24, title 34, Idaho Code, and" preceding "the provisions of title 18," and substituted "and the provisions of title 34, Idaho Code, shall be fully applicable and shall govern all school elections" for "which shall be fully applicable, or unless otherwise specifically provided, all school elections shall be governed by the provisions of this chapter"; and added the last two sentences.

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-402. Notice requirements. — (1) Notice of annual meeting of elementary school districts as provided for in section 33-510, Idaho Code, and of intent to discontinue a school, as provided for in section 33-511, Idaho

Code, and annual budget hearing as provided for in section 33-801, Idaho Code, shall be given by posting for not less than ten (10) days, and publishing once in a newspaper as provided in section 60-106, Idaho Code, published within the district, or, if there be none, then in a newspaper as provided in section 60-106, Idaho Code, published in the county in which such district lies. If more than one (1) newspaper is printed and published in said district or county, then in the newspaper most likely to give best general notice of the election within said district; provided that if no newspaper is published in the said district or county, then in a newspaper as provided in section 60-106, Idaho Code, most likely to give best general notice of the election within the district. If a financial emergency has been declared pursuant to section 33-522, Idaho Code, the notice of annual meeting and the notice of the annual budget hearing shall be posted pursuant to subsection (2) of this section, for not less than five (5) days, and by such further notice as shall provide reasonable notice to the patrons of the school district if publication in a newspaper is not feasible.

(2) Notices calling for bids for the acquisition, use, or disposal of real and personal property as provided for in section 33-601, Idaho Code, and contracting for transportation services as provided for in section 33-1510, Idaho Code, shall be given in a newspaper of general circulation as required by chapter 1, title 60, Idaho Code, except that the notice for contracting for transportation services shall be made not less than four (4) weeks before the date of opening bids.

(3) Proof of posting notice shall be upon the affidavit of the person posting the same; and proof of publication shall be upon the affidavit of the publisher of the newspaper or newspapers respectively. Such affidavits shall be filed with the board by the clerk responsible for the posting and the publishing of said notice.

History.

1963, ch. 13, § 45, p. 27; am. 1972, ch. 93, § 1, p. 203; am. 1978, ch. 65, § 1, p. 131; am. 1979, ch. 130, § 1, p. 401; am. and redesig. 1982, ch. 60, § 2, p. 106; am. 1985, ch. 235, § 1, p. 558; am. 1992, ch. 187, § 1, p. 581; am. 1997, ch. 40, § 1, p. 74; am. 2005, ch. 213, § 4, p. 637; am. 2007, ch. 166, § 1, p. 494; am. 2009, ch. 171, § 1, p. 541; am. 2009, ch. 341, § 32, p. 993; am. 2011, ch. 151, § 15, p. 414.

STATUTORY NOTES

Amendments.

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 171, changed the designation scheme; in subsection (1)(a), deleted "between which" following "hours"; and added the last sentence in subsection (6).

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

The 2011 amendment, by ch. 151, deleted surplus language at the beginning of the section which resulted from conforming the 2009 amendments and redesignated former subsections (6) through (8) as subsections (1) through (3).

Compiler's Notes.

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions, as amended by S.L. 2011, ch. 151.

Effective Dates.

Section 7 of S.L. 2009, ch. 171 declared an emergency. Approved April 15, 2009.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-403. Conduct of elections. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 33, effective January 1, 2011.

History.
1963, ch. 13, § 46, p. 27; am. and redesig. 1982, ch. 60, § 3, p. 106; am. 1985, ch. 115, § 1, p. 237; am. 1988, ch. 220, § 1, p. 418; am. 1991, ch. 53, § 1, p. 96.

33-403A. Assistance to voter. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 33, effective January 1, 2011.

History.
I.C., § 33-403A, as added by 1982, ch. 60, § 4, p. 106; am. 2010, ch. 235, § 12, p. 542.

33-403B. Spoiled ballots. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 33, effective January 1, 2011.

History.
I.C., § 33-403B, as added by 1982, ch. 60, § 5, p. 106.

33-403C. Challengers — Watchers. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 33, effective January 1, 2011.

History.
I.C., § 33-403C, as added by 1982, ch. 60, § 6, p. 106; am. 2006, ch. 232, § 1, p. 689.

33-404. Places elections to be held. — In elections involving excision and annexation of territory, or the consolidation of school districts, or the division of a school district, each notice of election shall designate that polling places shall be established, as follows:

In an election involving excision and annexation of territory, polling places shall be established pursuant to section 34-302, Idaho Code, in the district to which the territory or area is to be annexed; in the territory or area to be annexed; and in the remainder of the school district from which the territory or area is to be excised.

In an election involving consolidation of school districts, polling places shall be established pursuant to section 34-302, Idaho Code.

In an election involving the division of a school district, polling places shall be established pursuant to section 34-302, Idaho Code.

In any school election held within a joint school district, polling places shall be designated and established pursuant to section 34-302, Idaho Code, within such district, in each county.

History.
1963, ch. 13, § 47, p. 27; am. and redesig. 1982, ch. 60, § 7, p. 106; am. 1983, ch. 37, § 1, p. 88; am. 2009, ch. 341, § 34, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in the second and last paragraphs, inserted the section reference; in the third and fourth paragraphs, substituted the section reference for "in each district proposed to be consolidated" and "in each proposed trustee zone of each school district proposed to be created by the division," respectively; and, in the last paragraph, deleted "in which ten (10) or more electors of the district reside" from the end, and deleted the last sentence, which pertained to polling places where less than ten electors reside.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-405. Qualifications of school electors. — Any person voting, or offering to vote, in any school election must be, at the time of the election eighteen (18) years of age and a United States citizen who has resided in this state and in the school district at least thirty (30) days next preceding the election in which the elector desires to vote. In the case of election of trustees, the elector must be a resident of the same trustee zone as the candidate or candidates for school district trustees for whom the elector offers to vote for at least thirty (30) days next preceding the election in which the elector desires to vote.

Registration requirements set forth in chapter 4, title 34, Idaho Code, shall be applicable to school elections. The elector may be required to furnish to the election official proof of residence, which proof shall be established by either an Idaho motor vehicle driver's license or any other document definitely establishing the elector's residence within the school district or trustee zone.

History.

1963, ch. 13, § 48, p. 27; am. 1969, ch. 177, § 1, p. 533; am. 1970, ch. 37, § 1, p. 81; am. 1970, ch. 136, § 1, p. 331; am. 1971, ch. 25, § 3, p. 61; am. and redesig. 1982, ch. 60, § 8, p. 106; am. 1985, ch. 257, § 1, p. 711; am. 1987, ch. 256, § 1, p. 519; am. 1989, ch. 88, § 67, p. 151; am. 2009, ch. 341, § 35, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in the first sentence in the last paragraph, deleted "and in addition to the foregoing qualifications, a school elector shall have executed, in writing and immediately before voting, a form of the elector's oath attesting that he or she possesses the qualifications of a school elector prescribed by this section and indicating the mailing address, residence address or any other necessary information definitely locating the residence of the school elector" from the end.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-405A. Residence defined. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.

I.C., § 33-405A, as added by 1982, ch. 60, § 9, p. 106; am. 1989, ch. 288, § 1, p. 713; am. 1996, ch. 322, § 19, p. 1029.

33-405B. Challenge of voters. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-405B, as added by 1982, ch. 60, § 10, p. 106.

33-406. Absentee voting. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
1963, ch. 13, § 49, p. 27; am. 1967, ch. 12, § 1, p. 20; am. and redesig. 1982, ch. 60, § 11, p. 106; am. 1983, ch. 71, § 1, p. 156; am. 1987, ch. 179, § 1, p. 355; am. 1992, ch. 187, § 2, p. 581; am. 1994, ch. 161, § 1, p. 368; am. 1998, ch. 56, § 1, p. 209; am. 2000, ch. 205, § 1, p. 514; am. 2006, ch. 232, § 2, p. 689.

33-406A. Challenging absentee elector's vote. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-406A, as added by 1982, ch. 60, § 12, p. 106.

33-407. Return and canvass of elections. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
1963, ch. 13, § 50, p. 27; am. and redesig. 1982, ch. 60, § 13, p. 106; am. 2009, ch. 107, § 5, p. 339.

33-408. Election contests — Grounds of contest. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-408, as added by 1982, ch. 60, § 14, p. 106.

33-409. Bond election and levy increases — Time for filing — Validation of elections and bonds. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-409, as added by 1982, ch. 60, § 15, p. 106; am. 1982, ch. 313, § 1, p. 787.

33-410. Misconduct of judges. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-410, as added by 1982, ch. 60, § 16, p. 106.

33-411. Jurisdiction — Election contests. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-411, as added by 1982, ch. 60, § 17, p. 106; am. 1982, ch. 313, § 2, p. 787.

33-412. Who may contest an election. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-412, as added by 1982, ch. 60, § 18, p. 106; am. 1982, ch. 313, § 3, p. 787.

33-413. Complaint and security for costs. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-413, as added by 1982, ch. 60, § 19, p. 106; am. 1982, ch. 313, § 4, p. 787.

33-414. Complaint — Specific allegations. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-414, as added by 1982, ch. 60, § 20, p. 106.

33-415. Issuance of summons. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-415, as added by 1982, ch. 60, § 21, p. 106.

33-416. Procedure in general. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-416, as added by 1982, ch. 60, § 22, p. 106.

33-417. Voters to testify as to qualifications. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-417, as added by 1982, ch. 60, § 23, p. 106.

33-418. Liability for costs. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-418, as added by 1982, ch. 60, § 24, p. 106.

33-419. Form of judgment. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-419, as added by 1982, ch. 60, § 25, p. 106.

33-420. Determination of tie vote. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-420, as added by 1982, ch. 60, § 26, p. 106.

33-421. Election declared void. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-421, as added by 1982, ch. 60, § 27, p. 106.

33-422. Appeal. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-422, as added by 1982, ch. 60, § 28, p. 106.

33-423. Applicability of penal provisions. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-423, as added by 1984, ch. 46, § 1, p. 75.

33-424. Initiating recall proceedings. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-424, as added by 1986, ch. 348, § 1, p. 856; am. 1990, ch. 94, § 2, p. 194.

33-428. Filing petitions — Time limitations. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-428, as added by 1986, ch. 348, § 5, p. 856; am. 1990, ch. 94, § 3, p. 194; am. 1993, ch. 64, § 1, p. 166.

33-429. Petition — Form. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-429, as added by 1986, ch. 348, § 6, p. 856; am. 1990, ch. 94, § 4, p. 194; am. 2002, ch. 32, § 13, p. 46.

33-430. Petition — Size. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-430, as added by 1986, ch. 348, § 7, p. 856.

33-431. Number of signatures required. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-431, as added by 1986, ch. 348, § 8, p. 856.

33-432. Canvassing petition for sufficiency of signatures — Notice. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-432, as added by 1986, ch. 348, § 9, p. 856; am. 2004, ch. 252, § 1, p. 723.

33-433. Verification and canvass of signatures — Procedure. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-433, as added by 1986, ch. 348, § 10, p. 856.

33-434. Fixing date for recall election — Notice. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-434, as added by 1986, ch. 348, § 11, p. 856.

33-435. Response to recall petition statement. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-435, as added by 1986, ch. 348, § 12, p. 856; am. 1990, ch. 94, § 5, p. 194.

33-436. Destruction of insufficient recall petition. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-436, as added by 1986, ch. 348, § 13, p. 856; am. 1990, ch. 94, § 6, p. 194.

33-437. Invalid names — Record of. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-437, as added by 1986, ch. 348, § 14, p. 856.

33-438. Conduct of election — Form of ballot. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-438, as added by 1986, ch. 348, § 15, p. 856; am. 1990, ch. 94, § 7, p. 194.

33-439. Ascertaining the result — When recall effective. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-439, as added by 1986, ch. 348, § 16, p. 856; am. 1990, ch. 94, § 8, p. 194.

33-440. Enforcement provisions — Mandamus — Appeals. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-440, as added by 1986, ch. 348, § 17, p. 856.

33-441. Violations by signers. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-441, as added by 1986, ch. 348, § 18, p. 856.

33-442. Violations — Corrupt practices. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

History.
I.C., § 33-442, as added by 1986, ch. 348, § 19, p. 856.

CHAPTER 5
DISTRICT TRUSTEES

SECTION.

33-501. Board of trustees.
33-502. Declarations of candidacy for trustees.
33-502A. Declaration of intent for write-in candidates. [Repealed.]
33-502B. Board of trustees — One nomination — No election.
33-502C. Withdrawal of candidacy. [Repealed.]
33-502D. Procedure for correction of ballots when a withdrawal occurs after printing — Notice. [Repealed.]
33-503. Election of trustees — Uniform date.
33-503A. Transition of school trustee terms from three years to four years.
33-504. Vacancies on boards of trustees.
33-505. Board of trustees, district newly created.
33-510. Annual meetings — Regular meetings — Boards of trustees.
33-511. Maintenance of schools.
33-512. Governance of schools.
33-512C. Encouragement of gifted students.
33-513. Professional personnel.
33-513A. Professional personnel contracts for 2012-2013 school year. [Null and void, effective July 1, 2015.]

SECTION.

33-514. Issuance of annual contracts — Support programs — Categories of contracts — Optional placement. [Effective until July 1, 2014.]
33-514. Issuance of annual contracts — Support programs — Categories of contracts — Optional placement. [Effective July 1, 2014.]
33-514A. Issuance of limited contract — Category 1 contract.
33-515. Issuance of renewable contracts. [Effective until July 1, 2014.]
33-515. Issuance of renewable contracts. [Effective July 1, 2014.]
33-515A. Supplemental contracts.
33-515B. Reduced enrollment — Contract termination and severance stipend. [Null and void.]
33-516. Right to renewable contract when district is divided, consolidated or reorganized.
33-519. Release for religious instruction.
33-521. Employee severance in consolidated district.
33-522. Financial emergency.
33-522A. Reduction in force. [Null and void, effective July 1, 2014.]
33-523. Principals to determine new staffing. [Null and void.]
33-524. Liability insurance. [Null and void.]

33-501. Board of trustees. — Each school district shall be governed by a board of trustees. The board of trustees of each elementary school district shall consist of three (3) members, and the board of trustees of each other school district shall consist of five (5) members. Provided, however, that the board of trustees of any district which has had a change in its district boundaries subsequent to June 30, 1973, may consist of no fewer than five (5) nor more than nine (9) members if such provisions are included as part of an approved proposal to redefine and change trustee zones as provided in section 33-313, Idaho Code. The board of trustees of any district that has had a change in its district boundaries because of district consolidation on and after January 1, 2008, shall consist of five (5) members if two (2) districts consolidated or seven (7) members if three (3) or more districts consolidated. Commencing in 2011, a school district trustee shall be elected for a term of four (4) years beginning at twelve o'clock noon on July 1 next succeeding his election.

Each trustee shall at the time of his nomination and election, or appointment, be a school district elector of his district and a resident of the trustee zone from which nominated and elected, or appointed. In the event that a vacancy shall be declared as provided in section 33-504, Idaho Code, and the board of trustees is unable to appoint a trustee from the zone

vacated after ninety (90) days, the board of trustees may appoint a person at-large from within the boundaries of the school district to serve as the trustee from the zone where the vacancy occurred.

Each trustee shall qualify for and assume office on July 1 next following his election, or, if appointed, at the regular meeting of the board of trustees next following such appointment. An oath of office shall be administered to each trustee, whether elected, reelected or appointed. Said oath may be administered by the clerk, or by a trustee, of the district, and the records of the district shall show such oath of office to have been taken, and by whom administered and shall be filed with the official records of the district.

History.
1963, ch. 13, § 51, p. 27; am. 1973, ch. 125, § 2, p. 236; am. 1980, ch. 32, § 1, p. 56; am. 2008, ch. 351, § 2, p. 969; am. 2009, ch. 57, § 1, p. 160; am. 2009, ch. 341, § 37 p. 993.

STATUTORY NOTES

Amendments.
This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 57, added the last sentence in the second paragraph.

The 2009 amendment, by ch. 341, rewrote the last sentence in the first paragraph, which formerly read: "Except as otherwise provided by law, a school district trustee shall be elected for a term of three (3) years or until the annual meeting of his district held during the year in which his term expires"; and, in the first sentence in the last paragraph, substituted "assume office on July 1" for "assume office at the annual meeting of his school district."

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-502. Declarations of candidacy for trustees. — Any person legally qualified to hold the office of school trustee may file a declaration of candidacy for the office, each of which shall bear the name of the candidate, state the term for which declaration of candidacy is made, and bear the signature of not less than five (5) school district electors resident of the trustee zone of which the candidate is resident. The declaration shall be filed with the clerk of the board of trustees of the school district as provided in section 34-1404, Idaho Code.

History.
1963, ch. 13, § 52, p. 27; am. 1967, ch. 9, § 1, p. 14; am. 1992, ch. 187, § 3, p. 581; am. 2011, ch. 11, § 5, p. 24.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 11, substituted "as provided in section 34-1404, Idaho Code" for "not later than 5:00 p.m. on the fifth Friday preceding the day of election of trustees" at the end of the last sentence.

Effective Dates.
Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011. Approved February 23, 2011.

33-502A. Declaration of intent for write-in candidates. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 38, effective January 1, 2011.

History.
I.C., § 33-502A, as added by 1988, ch. 69, § 1, p. 100; am. 2000, ch. 204, § 1, p. 513.

33-502B. Board of trustees — One nomination — No election. — In any election for trustees, if, after the expiration of the date for filing written nominations for the office of trustee, it appears that only one (1) qualified candidate has been nominated for a position to be filled or if only one (1) candidate has filed a write-in declaration of intent as provided by section 34-1407, Idaho Code, no election shall be held for that position, and the board of trustees or the school district clerk with the written permission of the board, shall declare such candidate elected as a trustee, and the school district clerk shall immediately prepare and deliver to the person a certificate of election signed by him and bearing the seal of the district. The procedure set forth in this section shall not apply to any other school district election.

History.
I.C., § 33-502B, as added by 1990, ch. 332, § 1, p. 910; am. 1993, ch. 51, § 1, p. 132; am. 1994, ch. 160, § 1, p. 367; am. 2004, ch. 26, § 1, p. 43; am. 2009, ch. 341, § 39, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, in the first sentence, updated the section reference, and deleted "within thirteen (13) days before the scheduled date of the election" preceding "declare such candidate."

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-502C. Withdrawal of candidacy. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 38, effective January 1, 2011.

History.
I.C., § 33-502C, as added by 1994, ch. 164, § 1, p. 372.

33-502D. Procedure for correction of ballots when a withdrawal occurs after printing — Notice. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 38, effective January 1, 2011.

History.
I.C., § 33-502D, as added by 1994, ch. 164, § 2, p. 372.

33-503. Election of trustees — Uniform date. — The election of school district trustees including those in charter districts shall be on the third Tuesday in May in odd-numbered years. Notice and conduct of the election, and the canvassing of the returns shall be as provided in chapter 14, title 34, Idaho Code. In each trustee zone, the person receiving the greatest number of votes cast within his zone shall be declared by the board of trustees as the trustee elected from that zone.

If any two (2) or more persons have an equal number of votes in any trustee zone and a greater number than any other nominee in that zone, the board of trustees shall determine the winner by a toss of a coin.

History.
1963, ch. 13, § 53, p. 27; am. 1973, ch. 97, § 1, p. 166; am. 1975, ch. 181, § 1, p. 497; am. 2009, ch. 341, § 40, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, in the first paragraph, in the first sentence, added "in odd-numbered years," and in the second sentence, substituted "chapter 14, title 34, Idaho Code" for "sections 33-401-33-406, Idaho Code."

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-503A. Transition of school trustee terms from three years to four years. — In order to achieve an orderly transition to terms of four (4) years, and to hold trustee elections in the odd-numbered years, the following schedule shall be followed:

(1) For school districts with five (5) trustees:

(a) If two (2) trustees were elected to a regular trustee term in 2007, and one (1) trustee was elected to a regular term in 2008, then these three (3) trustees shall each serve a term that expires on July 1, 2011, and the trustees elected to a regular trustee term in 2009 shall each serve a term that expires on July 1, 2013.

(b) If two (2) trustees were elected to regular trustee terms in 2007, and two (2) trustees were elected to regular trustee terms in 2008, then those trustees elected in 2007 shall each serve a term that expires on July 1, 2011, and those elected in 2008 shall each serve a term that expires on July 1, 2013, and the trustee elected to a regular trustee term in 2009 shall serve a term that expires on July 1, 2013.

(c) If one (1) trustee was elected to a regular trustee term in 2007, the trustee shall serve a term that expires on July 1, 2011, and the trustees elected to a regular trustee term in 2008 shall each serve a term that expires on July 1, 2011.

(2) For school districts with six (6) trustees, two (2) trustees elected to a regular term in 2007 shall each serve a term that expires on July 1, 2011, and two (2) trustees elected to a regular term in 2009 shall each serve a term that expires on July 1, 2013, and one (1) of the trustees elected to a regular term in 2008 shall serve until July 1, 2011, and one (1) of the trustees elected to a regular term in 2008 shall serve until July 1, 2013, which shall be determined by the toss of a coin.

(3) For school districts with seven (7) trustees, two (2) trustees elected to a regular term in 2008 or 2009 shall each serve until July 1, 2011, and any remainder of the trustees elected in 2008 or 2009 shall serve until July 1, 2013, which shall be determined by the toss of a coin; and trustees elected to a regular term in 2007 shall serve until July 1, 2011.

(4) For elementary school districts with three (3) trustees, two (2) trustees elected to a regular term in 2007 and 2008 shall serve until July 1,

2011, and one (1) trustee elected to a regular term in 2009 shall serve until July 1, 2013.

History.
I.C., § 33-503A, as added by 2009, ch. 341, § 41, p. 993; am. 2010, ch. 185, § 2, p. 382; am. 2011, ch. 11, § 6, p. 24.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 185, in paragraph (1)(c), substituted the second occurrence of "expires on July 1, 2011" for "expires on July 1, 2013"; and in subsection (3), substituted "two (2) trustees" for "three (3) trustees" and "2007" for "2010."

The 2011 amendment, by ch. 11, substituted "July 1, 2011" for "July 1, 2013" at the end of subsection (3).

Effective Dates.
Section 161 of S.L. 2009, ch. 341, as amended by S.L. 2010, ch. 185, § 16 provided that the act should take effect on and after January 1, 2010.

Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011. Approved February 23, 2011.

33-504. Vacancies on boards of trustees. — A vacancy shall be declared by the board of trustees when any nominee has been elected but has failed to qualify for office, or within thirty (30) days of when any trustee shall (a) die; (b) resign as trustee; (c) remove himself from his trustee zone of residence; (d) no longer be a resident or school district elector of the district; (e) refuse to serve as trustee; (f) without excuse acceptable to the board of trustees, fail to attend four (4) consecutive regular meetings of the board; or (g) be recalled and discharged from office as provided in law.

Such declaration of vacancy shall be made at any regular or special meeting of the board of trustees, at which any of the above-mentioned conditions are determined to exist.

The board of trustees shall appoint to such vacancy a person qualified to serve as trustee of the school district provided there remains in membership on the board of trustees a majority of the membership thereof, and the board shall notify the state superintendent of public instruction of the appointment. Such appointment shall be made within ninety (90) days of the declaration of vacancy. After ninety (90) days, if the board of trustees is unable to appoint a trustee from the zone vacated, the board of trustees may appoint a person at-large from within the boundaries of the school district to serve as the trustee from the zone where the vacancy occurred. Otherwise, after one hundred twenty (120) days from the declaration of vacancy, appointments shall be made by the board of county commissioners of the county in which the district is situate, or of the home county if the district be a joint district.

Any person appointed as herein provided shall serve for the balance of the unexpired term of the office which was declared vacant and filled by appointment.

History.
1963, ch. 13, § 54, p. 27; am. 1975, ch. 181, § 2, p. 497; am. 1984, ch. 94, § 2, p. 218; am. 1986, ch. 348, § 20, p. 856; am. 1987, ch. 141, § 1, p. 282; am. 2009, ch. 57, § 2, p. 160; am. 2009, ch. 341, § 42, p. 993.

STATUTORY NOTES

Amendments.

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 57, in the third paragraph, added the third sentence and inserted "after one hundred twenty (120) days from the declaration of vacancy" in the last sentence.

The 2009 amendment, by ch. 341, at the end of the first paragraph, substituted "provided in law" for "provided in section 33-439, Idaho Code"; rewrote the last paragraph, which formerly read: "Any person appointed as herein provided shall serve until the annual meeting of school district trustees next following such appointment. At the annual election a trustee shall be elected to complete the unexpired term of the office which was declared vacant and filled by appointment"; and deleted the former last paragraph, which read: "The elected trustee shall assume office at the annual meeting of the school district next following the election."

Effective Dates.

Section 161 of S.L. 2009, ch. 341, as amended by S.L. 2010, ch. 185, § 16 provided that the act should take effect on and after January 1, 2010.

33-505. Board of trustees, district newly created. — Within ten (10) days after the entry of any order creating a new school district by the consolidation of districts or parts thereof, the trustees of all school districts involved in the consolidation shall meet at the call of the state superintendent of public instruction or his designee and, from their number, shall select a board of trustees of the new district representing each of the merged districts in an equal number to serve as follows: if two (2) districts consolidated, one (1) member representing the board of trustees of each district shall serve until the annual election of trustees next following; one (1) member representing the board of trustees of each district shall serve until the annual election the following year; and one (1) member appointed by the other four (4) members shall serve until the annual election in the year after that. If three (3) or more districts consolidated, three (3) members shall serve until the annual election of trustees next following; three (3) members shall serve until the annual election the following year; and one (1) member appointed by the other six (6) members shall serve until the annual election in the year after that. If the number of merged districts is greater than three (3), the superintendent of public instruction shall appoint as equally as possible from trustees of the previous districts so that each district, if possible, has representation on the consolidated district's board of trustees. The superintendent shall stagger the terms of his appointments so that an equal number of appointees' terms expire annually and those trustees shall sit for election. Thereafter, all trustees who are elected shall serve terms as provided in section 33-501, Idaho Code, for a board of trustees of a school district. The board of trustees shall report the names of said trustees to the state board of education. The board of trustees of the newly consolidated school district shall expeditiously redraw the trustee zones pursuant to section 33-313, Idaho Code.

The state board of education, at its first meeting next following receipt of notice of the creation of new school districts by the division of a district, shall appoint a board of trustees for each such new district, to serve until July 1 next following.

Boards of trustees selected or appointed as in this section provided shall forthwith meet and organize as provided in section 33-506, Idaho Code, and

thereupon the board of trustees of any district, the whole of which has been incorporated within the new district, or which was divided as the case may be, shall be dissolved and its powers and duties shall cease. Prior to the notice of annual election of trustees next following, the board of trustees of each school district created by consolidation or by division of districts shall determine by lot or by agreement from which of the trustee zones the trustees therefor shall be elected. Thereafter each trustee shall be elected for a term of four (4) years.

History.
1963, ch. 13, § 55, p. 27; am. 2008, ch. 351, § 3, p. 970; am. 2009, ch. 341, § 43, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, in the second paragraph, substituted "to serve until July 1 next following" for "to serve until the annual election of school district trustees next following"; and, in the last paragraph, in the second sentence, inserted "from" and deleted "for a term of one (1) year; which for a term of two (2) years, and which for a term of three (3) years" from the end, and, in the last sentence, substituted "four (4) years" for "three (3) years."

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-510. Annual meetings — Regular meetings — Boards of trustees. — The annual meeting of each school district shall be on the date of its regular July meeting in each year. Notice of the annual meeting of elementary school districts shall be given as provided in section 33-402, Idaho Code, but one (1) publication shall suffice.

Regular meetings of each board of school district trustees shall be held monthly, on a uniform day of a uniform week as determined at the annual meeting. Special meetings may be called by the chairman or by any two (2) members of the board and held at any time. If the time and place of special meetings shall not have been determined at a meeting of the board with all members being present, then notice of the time and place shall be given to each member and announced by written notice conspicuously posted at the school district office and at least two (2) or more public buildings within the school district not less than twenty-four (24) hours before such special meeting is to be convened.

A quorum for the transaction of business of the board of trustees shall consist of a majority of the members of the board. Unless otherwise provided by law, all questions shall be determined by a majority of the vote cast. The chairman of the board may vote in all cases.

All meetings shall conform to the provisions of section 67-2340 through section 67-2345, Idaho Code.

History.
1963, ch. 13, § 60, p. 27; am. 1973, ch. 62, § 1, p. 102; am. 1976, ch. 66, § 1, p. 233; am. 1977, ch. 51, § 1, p. 101; am. 1977, ch. 52, § 1, p. 102; am. 1978, ch. 137, § 1, p. 312; am. 2011, ch. 151, § 16, p. 414.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 151, updated the section reference in the first paragraph.

33-511. Maintenance of schools. — The board of trustees of each school district shall have the following powers and duties:

(1) Each elementary school district shall maintain at least one (1) elementary school, and each other school district shall maintain at least one (1) elementary school and one (1) secondary school;

(2) To employ necessary help and labor to maintain and operate the schools of the district;

(3) To discontinue any school within the district whenever it shall find such discontinuance to be in the best interests of the district and of the pupils therein. For the purposes of this section, discontinuing a school shall mean no longer maintaining a school of any kind, at the same location, except in the case of secondary units as herein provided.

(a) When any school proposed to be discontinued is one which was operated and maintained by a former district now wholly incorporated within the boundaries of the district operated by said board of trustees, and, immediately following reorganization and the dissolution of said former district, such school has been continuously operated and maintained at the same location by the presently organized district, the following procedures shall apply before discontinuing a school:

(i) The board of trustees must first give notice of such proposal not later than the first day of July next preceding the date of the proposed discontinuance. Such notice shall be posted, and published once, in the manner provided in section 33-402, Idaho Code, and shall identify the school proposed to be discontinued.

(ii) If, not later than the first day of August following the posting and publishing of the notice of discontinuance, five (5) or more qualified school district electors residing within the school district shall petition the board of trustees for an election to be held within the school district on the question of discontinuance of that school, the board of trustees shall forthwith order an election to be held within fourteen (14) days of the date of said order and shall give notice of the election.

(iii) Notice of such election shall be posted at or near the main door of the school proposed to be discontinued and at or near the main door of the administrative offices of the school district and shall also be published in one (1) issue of a newspaper printed in the county in which is situate the school proposed to be discontinued. The notice shall state the date the election is to be held, the place of voting, and the hours between which the polls shall be open. In addition, the notice of election shall describe the area of the particular attendance unit of the school district and shall identify the school proposed to be discontinued; and it shall state that only qualified school district electors residing within the school district may vote on the question of discontinuing the school.

(iv) The election shall be held within the school district and there shall be submitted to the electors a ballot containing the proposal:

1. For discontinuing the school located at,
2. Against discontinuing the school located at

(v) If a majority of the qualified electors, as defined in this section and voting in the election, shall vote against discontinuing that school, then said school shall not be discontinued; and no proposal to discontinue the same school shall be made by the board of trustees of the district within nine (9) months after the date of the election.

(vi) If a secondary unit which the trustees of a district propose to close is more than thirty (30) miles by all-weather road from the attendance unit to which it is proposed to transfer such students, then, notwithstanding other provisions of this section, five (5) electors residing within the attendance area of the unit proposed to be closed may, as provided by this section, petition the board of trustees requesting an election to determine whether or not such attendance unit, or any portion of it, shall be closed. The board shall forthwith call and hold an election as herein provided. However, for the purpose of this section relating to the secondary attendance unit thirty (30) miles or more distant from another secondary attendance unit, only the patrons resident in this attendance area shall be eligible to vote, except for attendance units, or portions of them, created after January 1, 2002, in which case qualified school district electors throughout the school district shall be eligible to vote. The election shall be deemed passed and the unit shall not be closed if a majority of those voting in the election vote in favor of retaining the attendance unit.

(b) The provisions of paragraph (a) of this subsection shall not apply when:

(i) The administrator of the division of building safety has determined that the school constitutes an imminent public safety hazard and has issued an order or notice requiring the school district superintendent, principal, board member or other person in charge to cause all persons, except those necessary to eliminate the condition, to be withdrawn from, and to be restrained from entering the school, pursuant to section 39-8008, Idaho Code; and

(ii) The school district board of trustees have voted at a public meeting to discontinue the school.

History.

1963, ch. 13, § 61, p. 27; am. 1967, ch. 366, § 1, p. 1057; am. 1973, ch. 5, § 1, p. 10; am. 2000, ch. 424, § 1, p. 1374; am. 2002, ch. 317, § 1, p. 898; am. 2011, ch. 125, § 1, p. 351; am. 2011, ch. 151, § 17, p. 414.

STATUTORY NOTES

Amendments.

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 125, divided and designated the existing provisions in subsection (3) as the introductory paragraph and paragraph (3)(a) and added paragraph (3)(b).

The 2011 amendment, by ch. 151, updated the section reference in paragraph (3)(a)(i).

33-512. Governance of schools. — The board of trustees of each school district shall have the following powers and duties:

(1) To fix the days of the year and the hours of the day when schools shall be in session. However:

(a) Each school district shall annually adopt and implement a school calendar which provides its students at each grade level with the following minimum number of instructional hours:

Grades	Hours
9-12	990
4-8	900
1-3	810
K	450

(b) School assemblies, testing and other instructionally related activities involving students directly may be included in the required instructional hours.

(c) When approved by a local school board, annual instructional hour requirements stated in paragraph (a) may be reduced as follows:

(i) Up to a total of twenty-two (22) hours to accommodate staff development activities conducted on such days as the local school board deems appropriate.

(ii) Up to a total of eleven (11) hours of emergency school closures due to adverse weather conditions and facility failures.

However, transportation to and from school, passing times between classes, recess and lunch periods shall not be included.

(d) Student and staff activities related to the opening and closing of the school year, grade reporting, program planning, staff meetings, and other classroom and building management activities shall not be counted as instructional time or in the reductions provided in paragraph (c)(i) of this section.

(e) For multiple shift programs, this rule applies to each shift (i.e., each student must have access to the minimum annual required hours of instruction).

(f) The instructional time requirement for grade 12 students may be reduced by action of a local school board for an amount of time not to exceed eleven (11) hours of instructional time.

(g) The state superintendent of public instruction may grant an exemption from the provisions of this section for an individual building within a district, when the closure of that building, for unforeseen circumstances, does not affect the attendance of other buildings within the district.

(2) To adopt and carry on, and provide for the financing of, a total educational program for the district. Such programs in other than elementary school districts may include education programs for out-of-school youth and adults; and such districts may provide classes in kindergarten;

(3) To provide, or require pupils to be provided with, suitable textbooks and supplies, and for advice on textbook selections may appoint a curricular materials adoption committee as provided in section 33-512A, Idaho Code;

(4) To protect the morals and health of the pupils;

(5) To exclude from school, children not of school age;

(6) To prescribe rules for the disciplining of unruly or insubordinate pupils, including rules on student harassment, intimidation and bullying,

such rules to be included in a district discipline code adopted by the board of trustees and a summarized version thereof to be provided in writing at the beginning of each school year to the teachers and students in the district in a manner consistent with the student's age, grade and level of academic achievement;

(7) To exclude from school, pupils with contagious or infectious diseases who are diagnosed or suspected as having a contagious or infectious disease or those who are not immune and have been exposed to a contagious or infectious disease; and to close school on order of the state board of health and welfare or local health authorities;

(8) To equip and maintain a suitable library or libraries in the school or schools and to exclude therefrom, and from the schools, all books, tracts, papers, and catechisms of sectarian nature;

(9) To determine school holidays. Any listing of school holidays shall include not less than the following: New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day. Other days listed in section 73-108, Idaho Code, if the same shall fall on a school day, shall be observed with appropriate ceremonies; and any days the state board of education may designate, following the proclamation by the governor, shall be school holidays;

(10) To erect and maintain on each schoolhouse or school grounds a suitable flagstaff or flagpole, and display thereon the flag of the United States of America on all days, except during inclement weather, when the school is in session; and for each Veterans Day, each school in session shall conduct and observe an appropriate program of at least one (1) class period remembering and honoring American veterans;

(11) To prohibit entrance to each schoolhouse or school grounds, to prohibit loitering in schoolhouses or on school grounds and to provide for the removal from each schoolhouse or school grounds of any individual or individuals who disrupt the educational processes or whose presence is detrimental to the morals, health, safety, academic learning or discipline of the pupils. A person who disrupts the educational process or whose presence is detrimental to the morals, health, safety, academic learning or discipline of the pupils or who loiters in schoolhouses or on school grounds, is guilty of a misdemeanor;

(12) To supervise and regulate, including by contract with established entities, those extracurricular activities which are by definition outside of or in addition to the regular academic courses or curriculum of a public school, and which extracurricular activities shall not be considered to be a property, liberty or contract right of any student, and such extracurricular activities shall not be deemed a necessary element of a public school education, but shall be considered to be a privilege. For the purposes of extracurricular activities, any secondary school located in this state that is accredited by an organization approved through a process defined by the state department of education shall be able to fully participate in all extracurricular activities described in and governed by the provisions of this subsection;

(13) To govern the school district in compliance with state law and rules of the state board of education;

(14) To submit to the superintendent of public instruction not later than July 1 of each year documentation which meets the reporting requirements of the federal gun-free schools act of 1994 as contained within the federal improving America's schools act of 1994;

(15) To require that all certificated and noncertificated employees hired on or after July 1, 2008, and other individuals who are required by the provisions of section 33-130, Idaho Code, to undergo a criminal history check shall submit a completed ten (10) finger fingerprint card or scan to the department of education no later than five (5) days following the first day of employment or unsupervised contact with students in a K-12 setting, whichever is sooner. Such employees and other individuals shall pay the cost of the criminal history check. If the criminal history check shows that the employee has been convicted of a felony crime enumerated in section 33-1208, Idaho Code, it shall be grounds for immediate termination, dismissal or other personnel action of the district, except that it shall be the right of the school district to evaluate whether an individual convicted of one (1) of these crimes and having been incarcerated for that crime shall be hired. Provided however, that any individual convicted of any felony offense listed in section 33-1208 2., Idaho Code, shall not be hired. For the purposes of criminal history checks, a substitute teacher is any individual who temporarily replaces a certificated classroom educator and is paid a substitute teacher wage for one (1) day or more during a school year. A substitute teacher who has undergone a criminal history check at the request of one (1) district in which he has been employed as a substitute shall not be required to undergo an additional criminal history check at the request of any other district in which he is employed as a substitute if the teacher has obtained a criminal history check within the previous five (5) years. If the district next employing the substitute still elects to require another criminal history check within the five (5) year period, that district shall pay the cost of the criminal history check or reimburse the substitute teacher for such cost. To remain on the statewide substitute teacher list maintained by the state department of education, the substitute teacher shall undergo a criminal history check every five (5) years;

(16) To maintain a safe environment for students by developing a system that cross-checks all contractors or other persons who have irregular contact with students against the statewide sex offender register;

(17) To provide support for teachers in their first two (2) years in the profession in the areas of: administrative and supervisory support, mentoring, peer assistance and professional development.

History.

1963, ch. 13, § 62, p. 27; am. 1972, ch. 9, § 1, p. 13; am. 1975, ch. 107, § 1, p. 218; am. 1980, ch. 198, § 1, p. 458; am. 1984, ch. 286, § 13, p. 660; am. 1986, ch. 302, § 2, p. 752; am. 1990, ch. 402, § 1, p. 1127; am. 1991, ch. 173, § 1, p. 420; am. 1993, ch. 269, § 1, p. 904; am. 1994, ch. 25, § 2, p. 38; am. 1995, ch. 248, § 3, p. 819; am. 1996, ch. 375, § 2, p. 1273; am. 1999, ch. 219, § 1, p. 584; am. 2000, ch. 335, § 1, p. 1125; am. 2001, ch. 204, § 1, p. 695; am. 2003, ch. 299, § 2, p. 814; am. 2005, ch. 340, § 1, p. 1061; am. 2006, ch. 244, § 3, p. 740; am. 2006, ch. 313, § 2, p. 969; am. 2008, ch. 349, § 2, p. 962; am. 2012, ch. 93, § 1, p. 254.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 93, substituted "curricular materials adoption committee" for "textbook adoption committee" in subsection (3) and added the second sentence in subsection (12).

JUDICIAL DECISIONS

School District's Duty.

Danger to a murdered student was not foreseeable, and there was nothing in the record to suggest that the school district received information during a 2004 investigation of other students' threat of a school shooting that would provide notice that two and a half years later one of the two students involved would commit a murder that was not, in fact, a school shooting. Stoddart v. Pocatello Sch. Dist. # 25, 149 Idaho 679, 239 P.3d 784 (2010).

When plaintiffs' school age son was injured after another student pushed him and hit him on the head, the school district was not liable to plaintiffs for a breach of duty. There was no evidence supporting a claim that the school district's failure to provide or secure medical treatment for plaintiffs' son in any way exacerbated his injury. Mareci v. Coeur d'Alene Sch. Dist. No. 271, 150 Idaho 740, 250 P.3d 791 (2011).

33-512C. Encouragement of gifted students. — If a student completes any required high school course with a grade of C or higher before entering grade nine (9), if that course meets the same standards that are required in high school, if the course is taught by a properly certified teacher who meets the federal definition of being highly qualified for the course being taught and if the school providing the course is accredited as recognized by the state board, the student shall be given a grade for the successful completion of that course and such grade and the number of credit hours assigned to the course shall be transferred to the student's high school transcript. Two (2) semester credits of the required six (6) semester mathematics credits must be taken in the final year of high school. The provisions of this section do not apply to senior projects.

History.

I.C., § 33-512C, as added by 2010, ch. 125, § 1, p. 272.

33-513. Professional personnel. — The board of trustees of each school district, including any specially chartered district, shall have the following powers and duties:

1. To employ professional personnel, on written contract in form approved by the state superintendent of public instruction, conditioned upon a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder. Should the board of trustees fail to enter into written contract for the employment of any such person, the state superintendent of public instruction shall withhold ensuing apportionments until such written contract be entered into. When the board of trustees has delivered a proposed contract for the next ensuing year to any such person, such person shall have a period of time to be determined by the board of trustees in its discretion, but in no event less than ten (10) calendar days from the date the contract is delivered, in which to sign the contract and return it to the board. If the board of trustees does not make a determination

as to how long the person has to sign and return the contract, the default time limit shall be twenty-one (21) calendar days after the contract is delivered to the person. Delivery of a contract may be made only in person or by certified mail, return receipt requested or electronically, return receipt requested. When delivery is made in person, delivery of the contract must be acknowledged by a signed receipt. When delivery is made by certified mail or electronically, delivery must be acknowledged by the return of the certified mail receipt or return electronic receipt from the person to whom the contract was sent. If the delivery is made electronically, with return electronic receipt, and the district has not received a return of a signed contract and has not received an electronic read receipt from the employee, the district shall then resend the original electronically delivered contract to the employee via certified mail, return receipt requested, and provide such individual with a new date for contract return. Should the person willfully refuse to acknowledge receipt of the contract or the contract is not signed and returned to the board in the designated period of time or if no designated period of time is set by the board, the default time, the board or its designee may declare the position vacant.

The board of trustees shall withhold the salary of any teacher who does not hold a teaching certificate valid in this state. It shall not contract to require any teacher to make up time spent in attending any meeting called by the state board of education or by the state superintendent of public instruction; nor while attending regularly scheduled official meetings of the state teachers' association.

2. In the case of school districts other than elementary school districts, to employ a superintendent of schools for a term not to exceed three (3) years, who shall be the executive officer of the board of trustees with such powers and duties as the board may prescribe. The superintendent shall also act as the authorized representative of the district whenever such is required, unless some other person shall be named by the board of trustees to act as its authorized representative. The board of trustees shall conduct an annual, written formal evaluation of the work of the superintendent of the district. The evaluation shall indicate the strengths and weaknesses of the superintendent's job performance in the year immediately preceding the evaluation and areas where improvement in the superintendent's job performance, in the view of the board of trustees, is called for.

3. To employ through written contract principals who shall hold a valid certificate appropriate to the position for which they are employed, who shall supervise the operation and management of the school in accordance with the policies established by the board of trustees and who shall be under the supervision of the superintendent.

4. To employ assistant superintendents and principals for a term not to exceed two (2) years. Service performed under such contract shall be included in meeting the provisions of section 33-515, Idaho Code, as a teacher and persons eligible for a renewable contract as a teacher shall retain such eligibility. The superintendent, the superintendent's designee, or in a school district that does not employ a superintendent, the board of trustees, shall conduct an annual, written evaluation of each such employee's performance.

5. To suspend, grant leave of absence, place on probation or discharge certificated professional personnel for a material violation of any lawful rules or regulations of the board of trustees or of the state board of education, or for any conduct which could constitute grounds for revocation of a teaching certificate. Any certificated professional employee, except the superintendent, may be discharged during a contract term under the following procedures:

(a) The superintendent or any other duly authorized administrative officer of the school district may recommend the discharge of any certificated employee by filing with the board of trustees written notice specifying the alleged reasons for discharge.

(b) Upon receipt of such notice the board, acting through its duly authorized administrative official, shall give the affected employee written notice of the allegations and the recommendation of discharge, along with written notice of a hearing before the board prior to any determination by the board of the truth of the allegations.

(c) The hearing shall be scheduled to take place not less than six (6) days nor more than twenty-one (21) days after receipt of the notice by the employee. The date provided for the hearing may be changed by mutual consent.

(d) The hearing shall be public unless the employee requests in writing that it be in executive session.

(e) All testimony at the hearing shall be given under oath or affirmation. Any member of the board, or the clerk of the board, may administer oaths to witnesses or affirmations by witnesses.

(f) The employee may be represented by legal counsel and/or by a representative of a local or state teachers association.

(g) The chairman of the board or the designee of the chairman shall conduct the hearing.

(h) The board shall cause an electronic record of the hearing to be made or shall employ a competent reporter to take stenographic or stenotype notes of all the testimony at the hearing. A transcript of the hearing shall be provided at cost by the board upon request of the employee.

(i) At the hearing, the superintendent or other duly authorized administrative officer shall present evidence to substantiate the allegations contained in such notice.

(j) The employee may produce evidence to refute the allegations. Any witness presented by the superintendent or by the employee shall be subject to cross-examination. The board may also examine witnesses and be represented by counsel.

(k) The affected employee may file written briefs and arguments with the board within three (3) days after the close of the hearing or such other time as may be agreed upon by the affected employee and the board.

(*l*) Within fifteen (15) days following the close of the hearing, the board shall determine and, acting through its duly authorized administrative official, shall notify the employee in writing whether the evidence presented at the hearing established the truth of the allegations and whether the employee is to be retained, immediately discharged, or discharged upon termination of the current contract.

(m) If the employee appeals the decision of the board of trustees to the district court, the district court may affirm the board's decision or set it aside and remand the matter to the board of trustees upon the following grounds and shall not set the same aside for any other grounds:

(i) That the findings of fact are not based upon any substantial, competent evidence;

(ii) That the board of trustees has acted without jurisdiction or in excess of its authority; or

(iii) That the findings by the board of trustees as a matter of law do not support the decision.

(n) The determination of the board of trustees shall be affirmed unless the court finds that the action of the board of trustees was:

(i) In violation of constitutional or statutory provisions;

(ii) In excess of the statutory authority of the board;

(iii) Made upon unlawful procedure; or

(iv) Arbitrary, capricious or an abuse of discretion.

6. To grant an employee's request for voluntary leave of absence. The board of trustees may delegate ongoing authority to grant an employee's request for voluntary leave of absence to the district's superintendent or other designee. Upon the superintendent or designee's granting of an employee's request for voluntary leave of absence, the board shall ratify or nullify the action at the next regularly scheduled board meeting.

7. To delegate to the superintendent or other designee the ongoing authority to place any employee on a period of involuntary leave of absence should the superintendent or designee believe that such action is in the best interest of the district. Upon the superintendent or designee's action to place an employee on a period of involuntary leave of absence, the board shall ratify or nullify the action of the superintendent or designee at the next regularly scheduled meeting of the board or at a special meeting of the board should the next regularly scheduled meeting of the board not be within a period of twenty-one (21) days from the date of the action.

(a) Where there is a criminal court order preventing the employee from being in the presence of minors or students, preventing the employee from being in the presence of any other adult individual employed at the school or detaining the employee in prison or jail, the employee's involuntary leave of absence shall be without pay due to the employee's inability to perform the essential functions of the employee's position. Without such a condition or situation, the involuntary leave of absence shall be with pay.

(i) During the period of involuntary leave of absence without pay, the salary of the employee will be maintained in a district managed account. Should the employee return to the district for active employment subsequent to the removal or dismissal of the court order, acquittal or adjudication of innocence, the district shall remit the salary funds, less the cost incurred by the district for the substitute hired to replace the employee. Further, should the employee return to the district under the provisions established in this subsection, the district shall arrange to have the employee credited with the public employee retirement system of Idaho (PERSI) for the employee's time away from work during the period of leave of absence.

(ii) During the period of involuntary leave of absence, the district shall continue to pay the district's portion of monthly costs associated with employee health insurance benefits. The assumption of this payment by the district shall not alter the employee's financial obligations, if any, under the policy.

(b) Should there be dual court orders preventing more than one (1) employee from being in the presence of one (1) or more other employees, all employees subject to the court order shall be excluded from the school pursuant to subsection 7.(a) of this section.

(c) If the period of involuntary leave of absence is due to the district's need to conduct an investigation into the conduct of the employee, and there are no related criminal investigation(s) and/or criminal charges of any nature pending, the administration shall complete its investigation within a period of sixty (60) working days. On or before the sixtieth working day, the administrative leave shall either cease and the employee shall be returned to his position of employment or the administration shall advance a personnel recommendation to the board of trustees. If a recommendation is advanced, the involuntary leave of absence shall continue until such time as the district board has made its decision in regard to the personnel recommendation with such decision effectively concluding the involuntary leave of absence. If a related criminal investigation is occurring and/or criminal charges are pending, the district shall not be bound to any limitation as to the duration of involuntary leave of absence. The timelines established in this section may be waived or modified by mutual agreement.

History.

1963, ch. 13, § 71, p. 27; am. 1973, ch. 126, § 1, p. 238; am. 1975, ch. 256, § 1, p. 700; am. 1976, ch. 84, § 1, p. 288; am. 1976, ch. 86, § 2, p. 293; am. 1978, ch. 340, § 3, p. 874; am. 1981, ch. 311, § 1, p. 653; am. 1983, ch. 83, § 1, p. 169; am. 1984, ch. 286, § 8, p. 660; am. 1985, ch. 107, § 3, p. 191; am. 1986, ch. 46, § 1, p. 134; am. 1988, ch. 267, § 1, p. 883; am. 1991, ch. 173, § 2, p. 420; am. 2013, ch. 67, § 1, p. 162; am. 2013, ch. 298, § 1, p. 785; am. 2013, ch. 331, § 1, p. 863; am. 2013, ch. 347, § 1, p. 938.

STATUTORY NOTES

Amendments.

This section was amended by four 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 67, in subsection 1, substituted "ten (10) calendar days" for "ten (10) days" in the third sentence, inserted the fourth sentence, inserted "or electronically, return receipt requested" in the fifth sentence, inserted "or electronically" and "or return electronic receipt" in the seventh sentence, added the eighth sentence, and inserted "or if no designated period of time is set by the board, the default time" and substituted, "the board or its designee" for "the board" in the last sentence.

The 2013 amendment, by ch. 298, added the last sentence in subsection 4.

The 2013 amendment, by ch. 331, added paragraphs 5(m) and 5(n).

The 2013 amendment, by ch. 347, added subsections 6 and 7.

Compiler's Notes.

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions. This section, as amended by S.L. 2011, ch. 96, was further amended by S.L. 2011, ch. 295 and S.L. 2012, ch. 265. However, those amendments also became null and void upon the rejection of

Proposition 1 at the November 6, 2012 election.

Effective Dates.
Section 2 of S.L. 2013 declared an emergency. Approved March 13, 2013.

33-513A. Professional personnel contracts for 2012-2013 school year. [Null and void, effective July 1, 2015.] — Professional personnel contracts entered into for the 2012-2013 school year signed on forms approved by the state superintendent of public instruction pursuant to section 33-513, Idaho Code, shall be governed by the laws of the state of Idaho that existed at the time such professional personnel contracts were entered.

History.
I.C., § 33-513A, as added by 2013, ch. 140, § 1, p. 336.

STATUTORY NOTES

Cross References.
State superintendent of instruction, § 67-1501 et seq.

Compiler's Notes.
Section 2 of S.L. 2013, ch. 140 provided: "The provisions of section 1 of this act shall be null, void and of no force and effect on and after July 1, 2015."

Effective Dates.
Section 2 of S.L. 2013, ch. 140 declared an emergency. Approved March 22, 2013.

33-514. Issuance of annual contracts — Support programs — Categories of contracts — Optional placement. [Effective until July 1, 2014.] — (1) The board of trustees shall establish criteria and procedures for the supervision and evaluation of certificated employees who are not employed on a renewable contract, as provided for in section 33-515, Idaho Code.

(2) There shall be three (3) categories of annual contracts available to local school districts under which to employ certificated personnel:

(a) A category 1 contract is a limited one-year contract as provided in section 33-514A, Idaho Code.

(b) A category 2 contract is for certificated personnel in the first and second years of continuous employment with the same school district. Upon the decision by a local school board not to reemploy the person for the following year, the certificated employee shall be provided a written statement of reasons for non-reemployment by no later than the first day of July. No property rights shall attach to a category 2 contract and therefore the employee shall not be entitled to a review by the local board of the reasons or decision not to reemploy.

(c) A category 3 contract is for certificated personnel during the third year of continuous employment by the same school district. When any such employee's work is found to be unsatisfactory, a defined period of probation shall be established by the board, but in no case shall a probationary period be less than eight (8) weeks. After the probationary period, action shall be taken by the board as to whether the employee is to be retained,

immediately discharged, discharged upon termination of the current contract or reemployed at the end of the contract term under a continued probationary status. Notwithstanding the provisions of sections 67-2344 and 67-2345, Idaho Code, a decision to place certificated personnel on probationary status may be made in executive session and the employee shall not be named in the minutes of the meeting. A record of the decision shall be placed in the employee's personnel file. This procedure shall not preclude recognition of unsatisfactory work at a subsequent evaluation and the establishment of a reasonable period of probation. In all instances, the employee shall be duly notified in writing of the areas of work which are deficient, including the conditions of probation. Each such certificated employee on a category 3 contract shall be given notice, in writing, whether he or she will be reemployed for the next ensuing year. Such notice shall be given by the board of trustees no later than the first day of July of each such year. If the board of trustees has decided not to reemploy the certificated employee, then the notice must contain a statement of reasons for such decision and the employee shall, upon request, be given the opportunity for an informal review of such decision by the board of trustees. The parameters of an informal review shall be determined by the local board.

(3) School districts hiring an employee who has been on renewable contract status with another Idaho district, or has out-of-state experience which would otherwise qualify the certificated employee for renewable contract status in Idaho, shall have the option to immediately grant renewable contract status, or to place the employee on a category 3 annual contract. Such employment on a category 3 contract under the provisions of this subsection may be for one (1), two (2) or three (3) years.

(4) There shall be a minimum of one (1) written evaluation in each of the annual contract years of employment, which shall be completed no later than May 1 of each year. The evaluation shall include a minimum of two (2) documented observations, one (1) of which shall be completed prior to January 1 of each year. The requirement to provide at least one (1) written evaluation does not exclude additional evaluations that may be performed. No civil action for money damages shall arise for failure to comply with the provisions of this subsection.

History.

I.C., § 33-514, as added by 1984, ch. 286, § 9, p. 660; am. 2000, ch. 66, § 1, p. 147; am. 2005, ch. 340, § 2, p. 1061; am. 2013, ch. 298, § 2, p. 785; am. 2013, ch. 353, § 1, p. 954.

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 353, § 3, at which time a new § 33-514 is enacted. For this section as effective July 1, 2014, see the following section, also numbered § 33-514.

Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 298, deleted the former second sentence in subsection (c), which read: "District procedures shall require at least one (1) evaluation prior to the beginning of the second semester of the school year and the results of any such evaluation shall be made a matter of record in the employee's

personnel file" and rewrote subsection (4), which formerly read: "There shall be a minimum of two (2) written evaluations in each of the annual contract years of employment, and at least one (1) evaluation shall be completed before January 1 of each year. The provisions of this subsection (4) shall not apply to employees on a category 1 contract."

The 2013 amendment, by ch. 353, substituted "the first day of July" for "May 25" in the first sentence of paragraph (2)(b) and substituted "first day of July" for "twenty-fifth day of May" in the tenth sentence of paragraph (2)(c).

Compiler's Notes.

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendments by S.L. 2012, ch. 1 and S.L. 2012, ch. 265, became null and void, and this section returned to its pre-2011 provisions, prior to the 2013 amendments.

Section 7 of S.L. 2012, ch. 265 provided: "If Chapter 96, Laws of 2011, is rejected through voter referendum in November 2012, the provisions of this act shall be null, void and of no further force or effect."

Section 6 of S.L. 2013, ch. 353 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 7 of S.L. 2013, ch. 353 declared an emergency. Approved April 16, 2013.

33-514. Issuance of annual contracts — Support programs — Categories of contracts — Optional placement. [Effective July 1, 2014.] — (1) The board of trustees shall establish criteria and procedures for the supervision and evaluation of certificated employees who are not employed on a renewable contract, as provided for in section 33-515, Idaho Code.

(2) There shall be three (3) categories of annual contracts available to local school districts under which to employ certificated personnel:

(a) A category 1 contract is a limited one-year contract as provided in section 33-514A, Idaho Code.

(b) A category 2 contract is for certificated personnel in the first and second years of continuous employment with the same school district. Upon the decision by a local school board not to reemploy the person for the following year, the certificated employee shall be provided a written statement of reasons for non-reemployment by no later than May 25. No property rights shall attach to a category 2 contract and therefore the employee shall not be entitled to a review by the local board of the reasons or decision not to reemploy.

(c) A category 3 contract is for certificated personnel during the third year of continuous employment by the same school district. District procedures shall require at least one (1) evaluation prior to the beginning of the second semester of the school year and the results of any such evaluation shall be made a matter of record in the employee's personnel file. When any such employee's work is found to be unsatisfactory a defined period of probation shall be established by the board, but in no case shall a probationary period be less than eight (8) weeks. After the probationary period, action shall be taken by the board as to whether the employee is to be retained, immediately discharged, discharged upon termination of the current contract or reemployed at the end of the contract term under a continued probationary status. Notwithstanding the provisions of sections 67-2344 and 67-2345, Idaho Code, a decision to place certificated

personnel on probationary status may be made in executive session and the employee shall not be named in the minutes of the meeting. A record of the decision shall be placed in the employee's personnel file. This procedure shall not preclude recognition of unsatisfactory work at a subsequent evaluation and the establishment of a reasonable period of probation. In all instances, the employee shall be duly notified in writing of the areas of work which are deficient, including the conditions of probation. Each such certificated employee on a category 3 contract shall be given notice, in writing, whether he or she will be reemployed for the next ensuing year. Such notice shall be given by the board of trustees no later than the twenty-fifth day of May of each such year. If the board of trustees has decided not to reemploy the certificated employee, then the notice must contain a statement of reasons for such decision and the employee shall, upon request, be given the opportunity for an informal review of such decision by the board of trustees. The parameters of an informal review shall be determined by the local board.

(3) School districts hiring an employee who has been on renewable contract status with another Idaho district or has out-of-state experience which would otherwise qualify the certificated employee for renewable contract status in Idaho, shall have the option to immediately grant renewable contract status, or to place the employee on a category 3 annual contract. Such employment on a category 3 contract under the provisions of this subsection may be for one (1), two (2) or three (3) years.

(4) There shall be a minimum of two (2) written evaluations in each of the annual contract years of employment, and at least one (1) evaluation shall be completed before January 1 of each year. The provisions of this subsection (4) shall not apply to employees on a category 1 contract.

History.
I.C., § 33-514, as added by 2013, ch. 353, § 4, p. 954.

STATUTORY NOTES

Compiler's Notes.
This section is enacted effective July 1, 2014, pursuant to S.L. 2013, ch. 353, § 4, at which time the former § 33-514 is repealed.

For this section as effective until July 1, 2014, see the preceding section, also numbered § 33-514.

33-514A. Issuance of limited contract — Category 1 contract. — After August 1, the board of trustees may exercise the option of employing certified personnel on a one (1) year limited contract, which may also be referred to as a category 1 contract consistent with the provisions of section 33-514, Idaho Code. Such a contract is specifically offered for the limited duration of the ensuing school year, and no further notice is required by the district to terminate the contract at the conclusion of the contract year.

History.
I.C., § 33-514A, as added by 1997, ch. 125, § 1, p. 374; am. 2000, ch. 66, § 2, p. 147.

STATUTORY NOTES

Compiler's Notes.
This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions.

33-515. Issuance of renewable contracts. [Effective until July 1, 2014.] — (1) During the third full year of continuous employment by the same school district, including any specially chartered district, each certificated employee named in subsection (16) of section 33-1001, Idaho Code, and each school nurse and school librarian shall be evaluated for a renewable contract and shall, upon having been offered a contract for the next ensuing year, and upon signing and timely returning a contract for a fourth full year, be placed on a renewable contract status with said school district entitling such individual to the right to automatic renewal of contract, subject to the provisions included in this chapter.

(2) At least once annually, the performance of each renewable contract certificated employee, school nurse, or school librarian shall be evaluated according to criteria and procedures established by the board of trustees in accordance with general guidelines approved by the state board of education. Such an evaluation shall be completed no later than May 1 of each year. The evaluation shall include a minimum of two (2) documented observations, one (1) of which shall be completed prior to January 1 of each year.

(3) Any contract automatically renewed under the provisions of this section may be renewed for a shorter term, longer term or the same length of term as stated in the current contract and at a greater, lesser or equal salary as that stated in the current contract. Absent the board's application of a formal reduction in force, renewals of standard teacher contacts may be for a shorter term, longer term or the same length of term as stated in the current standard teacher contract and at a greater, lesser or equal salary, and shall be uniformly applied to all employees based upon the district's adopted salary schedule to the extent allowable in section 33-1004E, Idaho Code.

(a) Contracts issued pursuant to this section shall be issued on or before the first day of July each year.

(b) At the discretion of the board, the district may issue letters of intent for employment for the next ensuing school year, to renewable contract status employees during May of each school year. Such letter of intent shall not state a specific duration of the contract or salary/benefits term for the next ensuing school year.

(c) Unless otherwise negotiated and ratified by both parties pursuant to sections 33-1271, et seq., Idaho Code, for the 2013-2014 school year, standard teacher renewals for terms shorter in length than that stated in the current standard contract of renewable certificated employees, should be considered and implemented only after the district has determined that the salary-based apportionment reimbursement that it estimates it will receive for the 2013-2014 school year is less than the sum the district

would otherwise be paying for salaries for certificated professional employees.

(4) Nothing in this section shall prevent the board of trustees from offering a renewed contract increasing the salary of any certificated person, or from reassigning an administrative employee to a nonadministrative position with appropriate reduction of salary from the preexisting salary level. In the event the board of trustees reassigns an administrative employee to a nonadministrative position, the board shall give written notice to the employee which contains a statement of the reasons for the reassignment. The employee, upon written request to the board, shall be entitled to an informal review of that decision. The process and procedure for the informal review shall be determined by the local board of trustees.

(5) Before a board of trustees can determine not to renew for reasons of an unsatisfactory report of the performance of any certificated person whose contract would otherwise be automatically renewed, such person shall be entitled to a reasonable period of probation. This period of probation shall be preceded by a written notice from the board of trustees with reasons for such probationary period and with provisions for adequate supervision and evaluation of the person's performance during the probationary period. Such period of probation shall not affect the person's renewable contract status. Consideration of probationary status for certificated personnel is consideration of the status of an employee within the meaning of section 67-2345, Idaho Code, and may be held in executive session. If the consideration results in probationary status, the individual on probation shall not be named in the minutes of the meeting. A record of the decision shall be placed in the teacher's personnel file.

(6) If the board of trustees takes action to immediately discharge or discharge upon termination of the current contract a certificated person whose contract would otherwise be automatically renewed, the action of the board shall be consistent with the procedures specified in section 33-513(5), Idaho Code, and furthermore, the board shall notify the employee in writing whether there is just and reasonable cause not to renew the contract or to reduce the salary of the affected employee, and if so, what reasons it relied upon in that determination.

(7) If the board of trustees takes action after the declaration of a financial emergency pursuant to section 33-522, Idaho Code, and such action is directed at more than one (1) certificated employee and, if mutually agreed to by both parties, a single informal review shall be conducted. Without mutual consent of both parties, the board of trustees shall use the following procedure to conduct a single due process hearing within sixty-seven (67) days of the declaration of financial emergency pursuant to section 33-522(2), Idaho Code, or on or before June 22, whichever shall occur first:

(a) The superintendent or any other duly authorized administrative officer of the school district may recommend the change in the length of the term stated in the current contract or reduce the salary of any certificated employee by filing with the board of trustees written notice specifying the purported reasons for such changes.

(b) Upon receipt of such notice, the board of trustees, acting through its duly authorized administrative official, shall give the affected employees

written notice of the reductions and the recommendation of the change in the length of the term stated in the current contract or the reduction of salary, along with written notice of a hearing before the board of trustees prior to any determination by the board of trustees.

(c) The hearing shall be scheduled to take place not less than six (6) days nor more than fourteen (14) days after receipt of the notice by the employees. The date provided for the hearing may be changed by mutual consent.

(d) The hearing shall be open to the public.

(e) All testimony at the hearing shall be given under oath or affirmation. Any member of the board, or the clerk of the board of trustees, may administer oaths to witnesses or affirmations by witnesses.

(f) The employees may be represented by legal counsel and/or by a representative of a local or state education association.

(g) The chairman of the board of trustees or the designee of the chairman shall conduct the hearing.

(h) The board of trustees shall cause an electronic record of the hearing to be made or shall employ a competent reporter to take stenographic or stenotype notes of all the testimony at the hearing. A transcript of the hearing shall be provided at cost by the board of trustees upon request of the employee.

(i) At the hearing, the superintendent or other duly authorized administrative officer shall present evidence to substantiate the reduction contained in such notice.

(j) The employees may produce evidence to refute the reduction. Any witness presented by the superintendent or by the employees shall be subject to cross-examination. The board of trustees may also examine witnesses and be represented by counsel.

(k) The affected employees may file written briefs and arguments with the board of trustees within three (3) days after the close of the hearing or such other time as may be agreed upon by the affected employees and the board of trustees.

(*l*) Within seven (7) days following the close of the hearing, the board of trustees shall determine and, acting through its duly authorized administrative official, shall notify the employees in writing whether the evidence presented at the hearing established the need for the action taken.

The due process hearing pursuant to this subsection shall not be required if the board of trustees and the local education association reach an agreement on issues agreed upon pursuant to section 33-522(3), Idaho Code.

(8) If the board of trustees, for reasons other than unsatisfactory service, for the ensuing contract year, determines to change the length of the term stated in the current contract, reduce the salary or not renew the contract of a certificated person whose contract would otherwise be automatically renewed, nothing herein shall require a probationary period.

(9) If the board of trustees, for reasons other than unsatisfactory service, for the ensuing contract year, determines to change the length of the term stated in the current contract or reduce the salary of a certificated person

whose contract would otherwise be automatically renewed, nothing herein shall require any individualized due process proceeding. In such circumstance, the board shall hold a single informal review for all impacted employees. The process and procedure for the single informal review shall be determined by the local board of trustees.

History.

1963, ch. 13, § 154, p. 27; am. 1973, ch. 126, § 2, p. 238; am. 1981, ch. 140, § 1, p. 242; am. 1982, ch. 86, § 1, p. 159; am. 1983, ch. 83, § 2, p. 169; am. 1983, ch. 212, § 1, p. 588; am. and redesig. 1984, ch. 286, § 10, p. 660; am. 1988, ch. 118, § 2, p. 217; am. 1999, ch. 208, § 1, p. 556; am. 2000, ch. 264, § 1, p. 740; am. 2000, ch. 266, § 4, p. 743; am. 2003, ch. 299, § 5, p. 814; am. 2006, ch. 244, § 4, p. 740; am. 2009, ch. 171, § 2, p. 541; am. 2013, ch. 298, § 3, p. 785; am. 2013, ch. 353, § 2, p. 954.

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 353, § 3, at which time a new § 33-515 is enacted. For this section as effective July 1, 2014, see the following section, also numbered § 33-515.

Amendments.

The 2009 amendment, by ch. 171, added the subsection designations; added the exception at the end of subsection (3); and added subsection (7).

The 2012 amendment, by ch. 265, deleted "At least once annually" from the beginning of subsection (2) and added the last sentence in paragraph (4)(a).

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 298, added the present last two sentences in subsection (2).

The 2013 amendment, by ch. 353, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions. This section, as amended by S.L. 2011, ch. 96, was further amended by S.L. 2011, ch. 295 and S.L. 2012, ch. 265. However, those amendments also became null and void upon the rejection of Proposition 1 at the November 6, 2012 election.

Section 6 of S.L. 2013, ch. 353 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 7 of S.L. 2009, ch. 171 declared an emergency. Approved April 15, 2009.

Section 7 of S.L. 2013, ch. 353 declared an emergency. Approved April 16, 2013.

33-515. Issuance of renewable contracts. [Effective July 1, 2014.] — (1) During the third full year of continuous employment by the same school district, including any specially chartered district, each certificated employee named in subsection (16) of section 33-1001, Idaho Code, and each school nurse and school librarian shall be evaluated for a renewable contract and shall, upon having been offered a contract for the next ensuing year, having given notice of acceptance of renewal and upon signing a contract for a fourth full year, be placed on a renewable contract status with said school district subject to the provisions included in this chapter.

(2) After the third full year of employment and at least once annually, the performance of each such certificated employee, school nurse, or school librarian shall be evaluated according to criteria and procedures established by the board of trustees in accordance with general guidelines approved by the state board of education. Except as otherwise provided, that person shall

have the right to automatic renewal of contract by giving notice, in writing, of acceptance of renewal. Such notice shall be given to the board of trustees of the school district then employing such person not later than the first day of June preceding the expiration of the term of the current contract. Except as otherwise provided by this paragraph, the board of trustees shall notify each person entitled to be employed on a renewable contract of the requirement that such person must give the notice hereinabove and that failure to do so may be interpreted by the board as a declination of the right to automatic renewal or the offer of another contract. Such notification shall be made, in writing, not later than the fifteenth day of May, in each year, except to those persons to whom the board, prior to said date, has sent proposed contracts for the next ensuing year, or to whom the board has given the notice required by this section.

(3) Any contract automatically renewed under the provisions of this section shall be for the same length as the term stated in the current contract and at a salary no lower than that specified therein, to which shall be added such increments as may be determined by the statutory or regulatory rights of such employee by reason of training, service, or performance, except where a board of trustees has declared a financial emergency pursuant to section 33-522, Idaho Code.

(4) Nothing in this section shall prevent the board of trustees from offering a renewed contract increasing the salary of any certificated person, or from reassigning an administrative employee to a nonadministrative position with appropriate reduction of salary from the preexisting salary level. In the event the board of trustees reassigns an administrative employee to a nonadministrative position, the board shall give written notice to the employee which contains a statement of the reasons for the reassignment. The employee, upon written request to the board, shall be entitled to an informal review of that decision. The process and procedure for the informal review shall be determined by the local board of trustees.

(5) Before a board of trustees can determine not to renew for reasons of an unsatisfactory report of the performance of any certificated person whose contract would otherwise be automatically renewed, or to renew the contract of any such person at a reduced salary, such person shall be entitled to a reasonable period of probation. This period of probation shall be preceded by a written notice from the board of trustees with reasons for such probationary period and with provisions for adequate supervision and evaluation of the person's performance during the probationary period. Such period of probation shall not affect the person's renewable contract status. Consideration of probationary status for certificated personnel is consideration of the status of an employee within the meaning of section 67-2345, Idaho Code, and may be held in executive session. If the consideration results in probationary status, the individual on probation shall not be named in the minutes of the meeting. A record of the decision shall be placed in the teacher's personnel file.

(6) If the board of trustees takes action to immediately discharge or discharge upon termination of the current contract a certificated person whose contract would otherwise be automatically renewed, or to renew the

contract of any such person at a reduced salary, the action of the board shall be consistent with the procedures specified in section 33-513 5., Idaho Code, and furthermore, the board shall notify the employee in writing whether there is just and reasonable cause not to renew the contract or to reduce the salary of the affected employee, and if so, what reasons it relied upon in that determination.

(7) If the board of trustees takes action after the declaration of a financial emergency pursuant to section 33-522, Idaho Code, and such action is directed at more than one (1) certificated employee and, if mutually agreed to by both parties, a single informal review shall be conducted. Without mutual consent of both parties, the board of trustees shall use the following procedure to conduct a single due process hearing within sixty-seven (67) days of the declaration of financial emergency pursuant to section 33-522(2), Idaho Code, or on or before June 22, whichever shall occur first:

(a) The superintendent or any other duly authorized administrative officer of the school district may recommend the change in the length of the term stated in the current contract or reduce the salary of any certificated employee by filing with the board of trustees written notice specifying the purported reasons for such changes.

(b) Upon receipt of such notice, the board of trustees, acting through its duly authorized administrative official, shall give the affected employees written notice of the reductions and the recommendation of the change in the length of the term stated in the current contract or the reduction of salary, along with written notice of a hearing before the board of trustees prior to any determination by the board of trustees.

(c) The hearing shall be scheduled to take place not less than six (6) days nor more than fourteen (14) days after receipt of the notice by the employees. The date provided for the hearing may be changed by mutual consent.

(d) The hearing shall be open to the public.

(e) All testimony at the hearing shall be given under oath or affirmation. Any member of the board, or the clerk of the board of trustees, may administer oaths to witnesses or affirmations by witnesses.

(f) The employees may be represented by legal counsel and/or by a representative of a local or state education association.

(g) The chairman of the board of trustees or the designee of the chairman shall conduct the hearing.

(h) The board of trustees shall cause an electronic record of the hearing to be made or shall employ a competent reporter to take stenographic or stenotype notes of all the testimony at the hearing. A transcript of the hearing shall be provided at cost by the board of trustees upon request of the employee.

(i) At the hearing the superintendent or other duly authorized administrative officer shall present evidence to substantiate the reduction contained in such notice.

(j) The employees may produce evidence to refute the reduction. Any witness presented by the superintendent or by the employees shall be subject to cross-examination. The board of trustees may also examine witnesses and be represented by counsel.

(k) The affected employees may file written briefs and arguments with the board of trustees within three (3) days after the close of the hearing or such other time as may be agreed upon by the affected employees and the board of trustees.

(*l*) Within seven (7) days following the close of the hearing, the board of trustees shall determine and, acting through its duly authorized administrative official, shall notify the employees in writing whether the evidence presented at the hearing established the need for the action taken.

The due process hearing pursuant to this subsection (7) shall not be required if the board of trustees and the local education association reach an agreement on issues agreed upon pursuant to section 33-522(3), Idaho Code.

(8) If the board of trustees, for reasons other than unsatisfactory service, for the ensuing contract year, determines to change the length of the term stated in the current contract, reduce the salary or not renew the contract of a certificated person whose contract would otherwise be automatically renewed, nothing herein shall require a probationary period.

History.
I.C., § 33-515, as added by 2013, ch. 353, § 5, p. 954.

STATUTORY NOTES

Compiler's Notes.
This section is enacted effective July 1, 2014, pursuant to S.L. 2013, ch. 353, § 5, at which time the former § 33-515 is repealed.

For this section as effective until July 1, 2014, see the preceding section, also numbered § 33-515.

33-515A. Supplemental contracts. — (1) In addition to the provisions of sections 33-514, 33-514A and 33-515, Idaho Code, a board of trustees may enter into supplemental contracts to provide extra duty assignments for certificated employees. An extra duty assignment is, and supplemental contracts may be used for, an assignment which is not part of a certificated employee's regular teaching duties. Any such contract shall be separate and apart from an annual, a renewable or a limited one (1) year contract, and no property rights shall attach to a supplemental contract. The contract shall be in a form approved by the state superintendent of public instruction.

(2) If a board of trustees determines not to reissue a supplemental contract, the board shall give written notice to the employee describing reasons for the decision not to reissue. The employee, upon written request to the board, shall be entitled to an informal review. The process and procedure for the informal review shall be determined by the local board of trustees. Within fifteen (15) days following the meeting with the employee, the board shall notify the employee of its final decision in the matter. Should a school district provide for additional procedures, nothing in this statute shall be interpreted to limit those procedures.

History.
I.C., § 33-515A, as added by 1999, ch. 208, § 2, p. 556.

STATUTORY NOTES

Compiler's Notes.

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions. This section was further amended by S.L. 2011, ch. 295. However, that amendment also became null and void upon the rejection of Proposition 1 at the November 6, 2012 election.

33-515B. Reduced enrollment — Contract termination and severance stipend. [Null and void.]

Null and void, pursuant to rejection of Proposition 1 on November 6, 2012.

History.

I.C., § 33-515B, as added by 2011, ch. 96, § 6, p. 209.

STATUTORY NOTES

Compiler's Notes.

From March 17, 2011 to July 1, 2011, this section, as enacted by S.L. 2011, ch. 96, § 6, read:

"**33-515B. Reduced enrollment — Contract termination and severance stipend.** — (1) Each certificated employee contract shall include a provision allowing the board of trustees to terminate the contract in the event of a reduction in student enrollment of greater than one percent (1%). The percent of certificated employees that may be so terminated shall be limited to the percent that enrollment decreased beyond said one percent (1%) reduction. The enrollment figures used for such calculations shall be the same as those used for the calculation of emergency levies pursuant to section 33-805, Idaho Code.

"(2) The school district shall notify those employees whose contracts are being terminated by no later than October 1. Such termination shall be effective as of a date specified by the board of trustees, but shall be no earlier than two (2) weeks after the date that the employee received notification, and no later than the end of the current term. No other notification, hearing or other process shall be required to terminate the contracts of employees pursuant to this section.

"(3) Selection of which employee contracts are to be terminated shall be at the sole discretion of the board of trustees, provided however, that the board of trustees shall not use seniority or contract status as a factor in making such determinations.

"(4) Employees whose contracts are terminated under the provisions of this section shall receive a severance payment from the school district equal to ten percent (10%) of the moneys that had yet to be earned under the contract for the remainder of the school year.

"(5) School districts shall furnish the state department of education with a list of employees whose contracts were terminated pursuant to this section, the dates on which such terminations were effective and the percentage of salary that had yet to be earned under the contract for the remainder of the school year. The state department of education shall calculate the salary-based apportionment and state-paid employee benefit amounts for each such employee, and, after reducing this allocation to account for the percent of the employee's salary that had already been earned for the school year, distribute ten percent (10%) of the remaining allocation to the school district as a reimbursement for severance payments made, from moneys appropriated to the educational support program."

This section was enacted by S.L. 2011, ch. 96, effective March 17, 2011. Session Laws 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section became null and void. Additionally, this section was repealed by S.L. 2011, ch. 335, § 1, effective July 1, 2011.

33-516. Right to renewable contract when district is divided, consolidated or reorganized. — If, by reason of the division of a school district, including any specially chartered district, or by reason of the consolidation of such a district with another district, or other districts, or by

reason of the reorganization of such a district, the position held by any teacher entitled to a renewable contract is transferred from the control of one board of trustees to the control of a new or different board of trustees, the right to automatic renewal is not thereby lost, and such new or different board of trustees shall be subject to all of the provisions of this chapter with respect to such teacher in the same manner as if such teacher were its employee and had been its employee during the time such teacher was actually employed by the board of trustees from whose control the position was transferred.

History.
I.C., § 33-1212A, as added by 1973, ch. 126, § 3, p. 238; am. and redesig. 1984, ch. 286, § 11, p. 660.

STATUTORY NOTES

Compiler's Notes.
This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions.

33-519. Release for religious instruction. — Upon application of his parent or guardian, or, if the student has attained the age of eighteen (18) years, upon application of the student, a student attending a public school in grades nine (9) through twelve (12) may be excused from school for a period not exceeding five (5) periods in any week or not exceeding one hundred sixty-five (165) hours per student during any one (1) school year for religious or other purposes. Release time pursuant to this section shall be scheduled by the board of trustees upon application as provided herein and the board shall have reasonable discretion over the scheduling and timing of the release time. Release time pursuant to this section shall not reduce the minimum graduation requirements for accredited Idaho high schools. The provisions of this section shall not be deemed to authorize the use of any public school facility for religious instruction. The board of trustees of a school district may not authorize the use of, and public school facilities, personnel or equipment may not be utilized, to maintain attendance records for the benefit of release time classes for religious instruction. No credit shall be awarded by the school or school district for completion of courses during release time for religious purposes. At the discretion of the board credit may be granted for other purposes.

History.
I.C., § 33-519, as added by 1991, ch. 250, § 1, p. 618; am. 2010, ch. 180, § 1, p. 370.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 180, substituted "period not exceeding five (5) periods in any week or not exceeding" for "period not exceeding (5) periods in any week and not exceeding" in the first sentence.

33-521. Employee severance in consolidated district. — The board of trustees of any school district newly formed within the last twelve (12) months through the consolidation of two (2) or more school districts may offer a one (1) time severance payment to a maximum of ten percent (10%) of the employees that were previously employed by the separate school districts. Such severance offers shall be made entirely at the discretion of the board of trustees, and shall not be bound by custom, seniority or contractual commitment. Employees are under no obligation to accept a severance offer. Any employee accepting a severance payment shall not be eligible for reemployment by the school district for a one (1) year period thereafter.

The severance payment shall consist of fifty-five percent (55%) of the salary-based apportionment funds allocated for the employee in the last year, plus any applicable state paid employee benefits. Such severance shall be reduced by one-half (½) for any employee who is simultaneously receiving a disbursement of early retirement incentive funds, pursuant to section 33-1004G, Idaho Code. The state department of education shall reimburse eligible school districts for one hundred percent (100%) of such costs, upon application by the school district.

History.
I.C., § 33-521, as added by 2007, ch. 79, § 3, p. 209.

STATUTORY NOTES

Compiler's Notes.
This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions.

33-522. Financial emergency. — (1) Prior to declaring a financial emergency, the board of trustees shall hold a public meeting for the purpose of receiving input concerning possible solutions to the financial problems facing the school district.

(2) If the state department of education certifies that one (1) or more of the conditions in paragraph (a), (b) or (c) of this subsection are met, then the board of trustees may declare a financial emergency if it determines that the condition in paragraph (f) of this subsection is also met. Alternatively, the board of trustees may declare a financial emergency if it determines that either of the conditions in paragraph (d) or (e) of this subsection are met and the state department of education certifies that the condition set forth in paragraph (f) of this subsection is also met.

(a) Any of the base salary multipliers in section 33-1004E, Idaho Code, are reduced by one and one-half percent (1 1/2%) or more from any prior fiscal year.

(b) The minimum instructional salary provision in section 33-1004E, Idaho Code, is reduced by one and one-half percent (1 1/2%) or more from any prior fiscal year.

(c) The amount of total general fund money appropriated per support unit

is reduced by greater than three percent (3%) from the original general fund appropriation per support unit of any prior fiscal year.

(d) The amount of property tax revenue to be collected by the school district that may be used for any general fund purpose, with the exception of any emergency levy funds, is reduced from the prior fiscal year, and the amount of said reduction represents more than one and one-half percent (1 1/2%) of the school district's general fund budget for combined state and local revenues from the prior fiscal year.

(e) The school district's general fund has decreased by at least one and one-half percent (1 1/2%) from the previous year's level due to a decrease in funding or natural disaster, but not as a result of a drop in the number of support units or the index multiplier calculated pursuant to section 33-1004A, Idaho Code, or a change in the emergency levy.

(f) The school district's unrestricted general fund balance, which excludes funds restricted by state or federal law and considering both anticipated expenditures and revenue, is less than five and one-half percent (5 1/2%) of the school district's unrestricted general fund budget at the time the financial emergency is declared or for the fiscal year for which the financial emergency is declared.

(3) Upon its declaration of a financial emergency, the board of trustees shall:

(a) Have the power to reopen the salary and benefits compensation aspects of the negotiated agreement, including the length of the certificated employee contracts and the amount of compensation and benefits; and

(b) If the parties to the negotiated agreement mutually agree, reopen other matters contained within the negotiated agreement directly affecting the financial circumstances in the school district.

If the board of trustees exercises the power provided in this subsection consistent with the requirements of subsection (2) of this section, both the board of trustees and the local education association shall meet and confer in good faith for the purpose of reaching an agreement on such issues.

(4) If, after the declaration of a financial emergency pursuant to subsection (2) of this section, both parties have met and conferred in good faith and an agreement has not been reached, the board of trustees may impose its last, best offer, following the outcome of the due process hearing held pursuant to section 33-515(7), Idaho Code.

(5) A financial emergency declared pursuant to subsection (2) of this section shall be effective for only one (1) fiscal year at a time and shall not be declared by the board of trustees for a second consecutive year, unless so qualified by additional reductions pursuant to the conditions listed in subsection (2) of this section.

(6) The time requirements of sections 33-514(2) and 33-515(2), Idaho Code, shall not apply in the event a financial emergency is declared pursuant to subsection (2) of this section.

History.

I.C., § 33-522, as added by 2009, ch. 171, § 3, p. 541; am. 2013, ch. 255, § 1, p. 629.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 255, substituted "one and one-half percent (1 1/2%)" for "five percent (5%)" in paragraph (2)(d) and substituted "one and one-half percent (1 1/2%)" for "three percent (3%)" in paragraph (2)(e).

Compiler's Notes.

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions, prior to the 2013 amendment.

Effective Dates.

Section 7 of S.L. 2009, ch. 171 declared an emergency. Approved April 15, 2009.

33-522A. Reduction in force. [Null and void, effective July 1, 2014.] —

(1)(a) The decision to institute a reduction in force and the selection of an employee or employees subject to such reduction shall be at the sole discretion of the board of trustees, except for the following limitation: The decision as to which employee or employees shall be subject to such reduction shall not be made solely on consideration of employee seniority or contract status.

(b) Each school district may adopt a policy establishing an equitable method of recalling individuals subject to a reduction in force if positions become available subsequent to the reduction in force.

History.

I.C., § 33-522A, as added by 2013, ch. 272, § 1, p. 708.

STATUTORY NOTES

Compiler's Notes.

As enacted, this section has a subsection (1), but no subsection (2).

Section 2 of S.L. 2013, ch. 272 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 3 of S.L. 2013, ch. 272 provided: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval. The provisions of this act shall be null, void and of no force and effect on and after July 1, 2014."

33-523. Principals to determine new staffing. [Null and void.]

Null and void, pursuant to rejection of Proposition 1 on November 6, 2012.

History.

I.C., § 33-523, as added by 2011, ch. 96, § 10, p. 209.

STATUTORY NOTES

Compiler's Notes.

This section was enacted by S.L. 2011, ch. 96, effective March 17, 2011. Session Laws 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section became null and void.

33-524. Liability insurance. [Null and void.]

Null and void, pursuant to rejection of Proposition 1 on November 6, 2012.

History.
I.C., § 33-524, as added by 2011, ch. 96, § 11, p. 209.

STATUTORY NOTES

Compiler's Notes.
This section was enacted by S.L. 2011, ch. 96, effective March 17, 2011. Session Laws 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section became null and void.

CHAPTER 6
SCHOOL PROPERTY

SECTION.
33-601. Real and personal property — Acquisition, use or disposal of same.
33-604. Renewable thermal energy.
33-605. Sales of excess energy.

33-601. Real and personal property — Acquisition, use or disposal of same. — The board of trustees of each school district shall have the following powers and duties:

(1) To rent to or from others, school buildings or other property used, or to be used, for school purposes.

(2) To contract for the construction, repair, or improvement of any real property, or the acquisition, purchase or repair of any equipment, or other personal property necessary for the operation of the school district.

Except for the purchase of curricular materials as defined in section 33-118A, Idaho Code, such contract shall be executed in accordance with the provisions of chapter 28, title 67, Idaho Code.

(3) To designate and purchase any real property necessary for school purposes or in the operation of the district, or remove any building, or dispose of any real property. Prior to, but not more than one (1) year prior to, any purchase or disposal of real property, the board shall have such property appraised by an appraiser certified in the state of Idaho, which appraisal shall be entered in the records of the board of trustees and shall be used to establish the value of the real property. The board of trustees shall determine the size of the site necessary for school purposes. The site shall be located within the incorporated limits of any city within the district; provided, however, that if the board finds that it is not in the best interests of the electors and the students of the district to locate the site within the incorporated limits of a city, the board, by duly adopted resolution setting forth the reasons for its finding, may designate a site located elsewhere within the district. In elementary school districts, except upon removal for highway purposes, a site may be designated or changed only after approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

(4)(a) To convey, except as provided by paragraph (b) of this subsection, by deed, bill of sale, or other appropriate instrument, all of the estate and

interest of the district in any property, real or personal. In elementary school districts, except such conveyance as is authorized by subsection (6) of this section, any of the transactions authorized in this subsection shall be subject to the approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

Prior to such sale or conveyance, the board shall have the property appraised pursuant to this section, which appraisal shall be entered in the records of the board of trustees. The property may be sold at public auction or by sealed bids, as the board of trustees shall determine, to the highest bidder. Such property may be sold for cash or for such terms and conditions as the board of trustees shall determine for a period not exceeding ten (10) years, with the annual rate of interest on all deferred payments not less than seven percent (7%) per annum. The title to all property sold on contract shall be retained in the name of the school district until full payment has been made by the purchaser, and title to all property sold under a note and mortgage or deed of trust shall be transferred to the purchaser at the point of sale under the terms and conditions of the mortgage or deed of trust as the board of trustees shall determine. Notice of the time and the conditions of such sale shall be published twice, and proof thereof made, in accordance with subsections (2) and (3) of section 33-402, Idaho Code, except that when the appraised value of the property is less than one thousand dollars ($1,000), one (1) single notice by publication shall be sufficient and the property shall be sold by sealed bids or at public auction.

The board of trustees may accept the highest bid, may reject any bid, or reject all bids. If the real property was donated to the school district the board may, within a period of one (1) year from the time of the appraisal, sell the property without additional advertising or bidding. Otherwise, the board of trustees must have new appraisals made and again publish notice for bids, as before. During the sealed bid or public auction process, no real property of the school district can be sold for less than its appraised value. If, thereafter, no satisfactory bid is made and received, the board may proceed under its own direction to sell and convey the property for the highest price the market will bear.

The board of trustees may sell personal property, with an estimated value of less than one thousand dollars ($1,000), without appraisal, by sealed bid or at public auction, provided that there has been not less than one (1) published advertisement prior to the sale of said property. If the property has an estimated value of less than five hundred dollars ($500), the property may be disposed of in the most cost-effective and expedient manner by an employee of the district empowered for that purpose by the board, provided however, such employee shall notify the board prior to disposal of said property.

(b) Real and personal property may be exchanged hereunder for other property. Provided, however, that aside from the provisions of this paragraph, any school district may by a vote of one-half (1/2) plus one (1) of the members of the full board of trustees, by resolution duly adopted, authorize the transfer or conveyance of any real or personal property

owned by such school district to the government of the United States, any city, county, the state of Idaho, any hospital district organized under chapter 13, title 39, Idaho Code, any cooperative service agency formed pursuant to section 33-317, Idaho Code, any other school district, the Idaho housing and finance association, any public charter school, any library district, any community college district, or any recreation district, with or without any consideration accruing to the school district, when in the judgment of the board of trustees it is for the interest of such school district that said transfer or conveyance be made. Prior to any transfer or conveyance of any real or personal property pursuant to this paragraph (4)(b), the board shall have the property appraised by an appraiser certified in the state of Idaho, which appraisal shall be entered in the records of the board of trustees and shall be used to establish the value of the real or personal property. Provided however, if the board of trustees finds it is in the school district's best interests to trade personal property to a person or entity for like kind personal property, the board of trustees may vote to elect to do so. The board of trustees may elect to abstain from an appraisal of the personal property if the estimated value of such property is less than five thousand dollars ($5,000).

(5) To enter into contracts with any city located within the boundaries of the school district for the joint purchase, construction, development, maintenance and equipping of playgrounds, ball parks, swimming pools, and other recreational facilities upon property owned either by the school district or the city.

(6) To convey rights-of-way and easements for highway, public utility, and other purposes over, upon or across any school property and, when necessary to the use of such property for any such purpose, to authorize the removal of school buildings to such new location, or locations, as shall be determined by the board of trustees, and such removal shall be made at no cost or expense to the school district.

(7) To authorize the use of any school building or vacant land of the district as a community center, or for any public purpose, and to establish a policy of charges, if any, to be made for such use.

(8) To exercise the right of eminent domain under the provisions of chapter 7, title 7, Idaho Code, for any of the uses and purposes provided in section 7-701, Idaho Code.

(9) If there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for national or local defense, or it is necessary to do emergency work to safeguard life, health or property, the board of trustees may pass a resolution declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. Upon adoption of the resolution, the board may expend any sum required in the emergency without compliance with this section.

History.

1963, ch. 13, § 70, p. 27; am. 1967, ch. 73, § 1, p. 167; am. 1972, ch. 39, § 1, p. 61; am. 1973, ch. 14, § 1, p. 29; am. 1974, ch. 140, § 1, p. 1353; am. 1975, ch. 109, § 1, p. 222; am. 1978, ch. 165, § 1, p. 361; am. 1979, ch. 120, § 1, p. 370; am. 1980, ch. 120, § 1, p. 259; am. 1981, ch. 143, § 1, p. 246; am. 1982, ch. 87,

§ 1, p. 160; am. 1983, ch. 111, § 1, p. 238; am. 1984, ch. 45, § 1, p. 72; am. 1992, ch. 237, § 1, p. 705; am. 1998, ch. 88, § 5, p. 298; am. 2000, ch. 345, § 1, p. 1167; am. 2001, ch. 191, § 1, p. 654; am. 2003, ch. 264, § 1, p. 699; am. 2004, ch. 219, § 1, p. 655; am. 2005, ch. 213, § 5, p. 637; am. 2006, ch. 228, § 1, p. 680; am. 2008, ch. 191, § 1, p. 598; am. 2008, ch. 307, § 1, p. 853; am. 2009, ch. 171, § 4, p. 541; am. 2009, ch. 227, § 2, p. 708; am. 2009, ch. 341, § 44, p. 993; am. 2010, ch. 42, § 1, p. 73; am. 2012, ch. 15, § 1, p. 32.

STATUTORY NOTES

Amendments.

This section was amended by three 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 171, substituted "subsections (7) and (8)" for "subsections g. and h." in the last sentence of the first undesignated paragraph under subsection (4)(a).

The 2009 amendment, by ch. 227, inserted "any cooperative service agency formed pursuant to section 33-317, Idaho Code" in the first sentence in the fourth paragraph in subsection (4)(a).

The 2009 amendment, by ch. 341, updated the subsection references in the last sentence in the undesignated paragraph following subsection (4)(a).

The 2010 amendment, by ch. 42, in paragraph (4)(a), in the third paragraph, added the fourth sentence, added "for the highest price the market will bear" at the end of the last sentence, and deleted the former last sentence, which read: "In no case shall any real property of the school district be sold for less than its appraisal"; and in paragraph (4)(b), added the last two sentences.

The 2012 amendment, by ch. 15, inserted "or vacant land" in subsection (7).

Effective Dates.

Section 7 of S.L. 2009, ch. 171 declared an emergency. Approved April 15, 2009.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 2 of S.L. 2010, ch. 42 provided that the act should take effect on and after January 1, 2011.

33-604. Renewable thermal energy. — The board of trustees of each school district is empowered to establish, create, develop, own, maintain, operate and contract for the establishment, creation, development, ownership, maintenance and operation of thermal heating and cooling energy generation and distribution systems, including hot or chilled water systems, where thermal energy is generated from biomass, geothermal or solar renewable energy.

History.

I.C., § 33-604, as added by 2010, ch. 220, § 1, p. 493.

33-605. Sales of excess energy. — The board of trustees of a school district which operates an energy system as described in section 33-604, Idaho Code, may use, sell or exchange excess thermal hot or chilled water not needed by the school district subject to the following conditions:

(1) Revenues from the sale of energy as described in section 33-604, Idaho Code, shall be used for the benefit of the school district.

(2) Sale of energy as described in section 33-604, Idaho Code, shall be pursuant to a school district written contract approved by resolution of the board of trustees of the school district, which resolution shall be forwarded to the state department of education.

History.

I.C., § 33-605, as added by 2010, ch. 220, § 2, p. 493.

CHAPTER 8

BUDGET AND TAX LEVY

SECTION.
33-801. School district budget.
33-802. School levies.
33-803. Levy for education of children of migratory farm workers.
33-804. School plant facilities reserve fund levy.

33-801. School district budget. — No later than twenty-eight (28) days or, if the conditions provided for in section 33-804(4), Idaho Code, have been met, fourteen (14) days prior to its annual meeting, the board of trustees of each school district shall have prepared a budget, in form prescribed by the state superintendent of public instruction, and shall have called and caused to be held a public hearing thereon, and at such public hearing, or at a special meeting held no later than fourteen (14) days after the public hearing, shall adopt a budget for the ensuing year. Notice of the hearing shall be posted, and published as prescribed in section 33-402, Idaho Code, and a record of the hearing shall be kept by the clerk of the board of trustees. At the time said notice is given and until the date of the hearing, a copy of the budget shall be available for public inspection at all reasonable times at the administrative offices of the school district, or at the office of the clerk of the district. The board of trustees of each school district shall also prepare and publish, as a part of such notice, a summary statement of the budget for the current and ensuing years. Such statement shall be prepared in a manner consistent with standard accounting practices and in such form as the state superintendent of public instruction shall prescribe, and, among other things, said statement shall show amounts budgeted for all major classifications of income and expenditures, with total amounts budgeted for salary and wage expenditures in each such classification shown separately. Such statement shall show amounts actually expended for the two (2) previous years for the same classification for purposes of comparison. The budgeted dollar amounts of revenue in those categories included within the provisions of section 33-802, Idaho Code, as approved within the adopted budget shall be the same as presented to the respective county commissioners for tax levy purposes.

History.

1963, ch. 13, § 90, p. 27; am. 1963, ch. 348, § 1, p. 986; am. 1973, ch. 62, § 2, p. 102; am. 1975, ch. 46, § 1, p. 85; am. 1978, ch. 158, § 1, p. 346; am. 1985, ch. 107, § 5, p. 191; am. 1989, ch. 2, § 1, p. 3; am. 1997, ch. 175, § 1, p. 494; am. 2009, ch. 171, § 5, p. 541; am. 2011, ch. 299, § 2, p. 853.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 171, inserted "or, if a financial emergency has been declared pursuant to section 33-522, Idaho Code, fourteen (14) days" in the first sentence.

The 2011 amendment, by ch. 299, substituted "the conditions provided for in section 33-804(4), Idaho Code, have been met" for "a financial emergency has been declared pursuant to section 33-522, Idaho Code" near the beginning of the section.

Compiler's Notes.

Section 1 of S.L. 2011, ch. 299 provided: "The provisions of Section 33-1019, Idaho Code, notwithstanding, for the period July 1,

2011, through June 30, 2012, only, the current fiscal year's amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows:

"(1) Subtract from the local maintenance match requirement all plant facility levy funds levied for tax year 2011.

"(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building.

"School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education."

Section 1 of S.L. 2013, ch 300 provided: "The provisions of Section 33-1019, Idaho Code, notwithstanding, for the period July 1, 2013, through June 30, 2014, only, two-thirds (2/3) of the current fiscal year's amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows:

"(1) Subtract from two-thirds (2/3) of the local maintenance match requirement two-thirds (2/3) of all plant facility levy funds levied for tax year 2012.

"(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building. School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education."

Effective Dates.

Section 7 of S.L. 2009, ch. 171 declared an emergency. Approved April 15, 2009.

Section 5 of S.L. 2011, ch 299 declared an emergency. Approved April 11, 2011.

33-802. School levies. — Any tax levied for school purposes shall be a lien on the property against which the tax is levied. The board of trustees shall determine the levies upon each dollar of taxable property in the district for the ensuing fiscal year as follows:

(1) Bond, Interest and Judgment Obligation Levies. Such levies as shall be required to satisfy all maturing bond, bond interest, and judgment obligations.

(2) Budget Stabilization Levies. School districts not receiving state equalization funds in fiscal year 2006 may authorize a budget stabilization levy for calendar year 2006 and each year thereafter. Such levies shall not exceed the difference between the amount of equalized funds that the state department of education estimates the school district will receive in fiscal year 2007, based on the school district's fiscal year 2006 reporting data, and the combined amount of money the school district would have received from its maintenance and operation levy and state property tax replacement funds in fiscal year 2007 under the laws of the state of Idaho as they existed prior to amendment by the first extraordinary session of the fifty-eighth Idaho legislature. The state department of education shall notify the state tax commission and affected counties and school districts of the maximum levy amounts permitted, by no later than September 1, 2006.

(3) Supplemental Maintenance and Operation Levies. No levy in excess of the levy permitted by this section shall be made by a noncharter district unless such a supplemental levy in a specified amount and for a specified time not to exceed two (2) years be first authorized through an election held

subject to the provisions of section 34-106, Idaho Code, and pursuant to title 34, Idaho Code, and approved by a majority of the district electors voting in such election. A levy approved pursuant to this subsection may be reduced by a majority vote of the board of trustees in the second year.

(4) Charter District Supplemental Maintenance and Operation. Levies pursuant to the respective charter of any such charter district shall be first authorized through an election held subject to the provisions of section 34-106, Idaho Code, and pursuant to title 34, Idaho Code, and approved by a majority of the district electors voting in such election.

(5) The board of trustees of any school district that has, for at least seven (7) consecutive years, been authorized through an election held to certify a supplemental levy that has annually been equal to or greater than twenty percent (20%) of the total general maintenance and operation fund, may submit the question of an indefinite term supplemental levy to the electors of the school district. Such question shall clearly state the dollar amount that will be certified annually and that the levy will be for an indefinite number of years. The question must be approved by a majority of the district electors voting on the question in an election held subject to the provisions of section 34-106, Idaho Code, and pursuant to title 34, Idaho Code. The levy approved pursuant to this subsection may be reduced by a majority vote of the board of trustees during any fiscal year.

(6) A charter district may levy for maintenance and operations if such authority is contained within its charter. In the event property within a charter district's boundaries is contained in a revenue allocation area established under chapter 29, title 50, Idaho Code, and such revenue allocation area has given notice of termination thereunder, then, only for the purpose of determining the levy described in this subsection, the district may add the increment value, as defined in section 50-2903, Idaho Code, to the actual or adjusted market value for assessment purposes of the district as such value existed on December 31 of the previous year.

History.

1963, ch. 13, § 91, p. 27; am. 1963, ch. 422, § 1, p. 1097; am. 1970, ch. 61, § 1, p. 149; am. 1973, ch. 296, § 1, p. 620; am. 1979, ch. 254, § 2, p. 661; am. 1980, ch. 390, § 3, p. 990; am. 1981, ch. 224, § 1, p. 433; am. 1983, ch. 235, § 1, p. 639; am. 1987, ch. 52, § 1, p. 85; am. 1987, ch. 273, § 1, p. 566; am. 1988, ch. 344, § 1, p. 1021; am. 1989, ch. 8, § 1, p. 9; am. 1991, ch. 313, § 1, p. 820; am. 1995, ch. 26, § 1, p. 33; am. 1996, ch. 322, § 20, p. 1029; am. 2005, ch. 191, § 1, p. 591; am. 2006 (1st E.S.), ch. 1, § 3; am. 2009, ch. 341, § 45, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in subsections (3) through (5), inserted "subject to the provisions of section 34-106, Idaho Code" and substituted "title 34, Idaho Code" for "chapter 4, title 33, Idaho Code."

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-803. Levy for education of children of migratory farm workers. — In any school district in which there is located any farm labor camp and the children of migratory farm workers housed therein attend the schools of the district, the board of trustees may make a levy not exceeding

one-tenth of one percent (.1%) of the market value for assessment purposes on all taxable property within the district, in addition to any other levies authorized by law, for the cost of educating such children.

Whenever the aggregate of the levy herein authorized and other levies made for maintenance and operation of the district shall exceed six-tenths of one percent (.6%) of the market value for assessment purposes on all taxable property within the district, the levy authorized by this section must be approved by the school district electors at a tax levy election held for that purpose. Notice of such election shall be given, the election shall be conducted, and the returns thereof made, as provided in title 34, Idaho Code; and the question shall be approved only if a majority of the qualified electors voting at such election vote in favor thereof.

History.
1963, ch. 13, § 92, p. 27; am. 1995, ch. 82, § 11, p. 218; am. 2009, ch. 341, § 46, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, in the first paragraph, substituted "one-tenth of one percent" for "one tenth percent"; and, in the last paragraph, substituted "six-tenths of one percent" for "six tenths percent" in the first sentence, substituted "title 34, Idaho Code" for "sections 33-401 through 33-406, Idaho Code" in the last sentence, and deleted the former last sentence, which read: "If the election be held in conjunction with any other school election, the question herein shall be submitted by separate ballot."

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-804. School plant facilities reserve fund levy. — In any school district in which a school plant facilities reserve fund has been created, either by resolution of the board of trustees or by apportionment to new districts according to the provisions of section 33-901, Idaho Code, to provide funds therefor the board of trustees shall submit to the qualified school electors of the district the question of a levy not to exceed four-tenths of one percent (.4%) of market value for assessment purposes in each year, as such valuation existed on December 31 of the previous year, for a period not to exceed ten (10) years.

The question of a levy to be submitted to the electors of the district and the notice of such election shall state the dollar amount proposed to be collected each year during the period of years in each of which the collection is proposed to be made, the percentage of votes in favor of the proposal which are needed to approve the proposed dollar amount to be collected, and the purposes for which such funds shall be used. Said notice shall be given, the election shall be held subject to the provisions of section 34-106, Idaho Code, and conducted and the returns canvassed as provided in title 34, Idaho Code; and the dollar amount to be collected shall be approved only if:

1. Fifty-five percent (55%) of the electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities and bonded indebtedness of less than two-tenths of one percent (.2%) of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election;

2. Sixty percent (60%) of the electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities and bonded indebtedness of two-tenths of one percent (.2%) or more and less than three-tenths of one percent (.3%) of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election; or

3. Two-thirds (2/3) of the electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities and bonded indebtedness of three-tenths of one percent (.3%) or more of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election.

If the question be approved, the board of trustees may make a levy, not to exceed four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, in each year for which the collection was approved, sufficient to collect the dollar amount approved and may again submit the question at the expiration of the period of such levy, for the dollar amount to be collected during each year, and the number of years which the board may at that time determine. Or, during the period approved at any such election, if such period be less than ten (10) years or the levy be less than four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, the board of trustees may submit to the qualified school electors in the same manner as before, the question whether the number of years, or the levy, or both, be increased, but not to exceed the maximum herein authorized. If such increase or increases be approved by the electors, the terms of such levy shall be in lieu of those approved in the first instance, but disapproval shall not affect any terms theretofore in effect.

Any bonded indebtedness incurred in accordance with the provisions of section 33-1103, Idaho Code, subsequent to the approval of a plant facilities reserve fund levy shall not affect the terms of that levy for any time during which such levy is in effect.

4. In any fiscal year in which the state department of education certifies that the statewide per support unit funding for salary-based apportionment and discretionary funds has decreased, in the aggregate, from the prior fiscal year, the board of trustees of any school district with a previously approved plant facilities levy may submit to the qualified electors of the school district the question of converting a previously approved plant facilities levy to a supplemental levy, subject to the following:

(a) The term of the supplemental levy shall not exceed the lesser of two (2) years or the remaining term on the previously approved plant facilities levy; and

(b) The first tax year of conversion shall be the one in which the revenues collected will accrue to the fiscal year in which the state department of education certifies that the condition stated in subsection 4. of this section exists; and

(c) Up to one hundred percent (100%) of the previously approved plant facilities levy amount may be converted; and

(d) Conversion of a plant facilities levy to a supplemental levy shall not affect any other supplemental levy; and

(e) The question to be submitted to the electors of the district and the notice of such election shall state the dollar amount proposed to be converted each year, the number of years to be converted, the percentage of the plant facilities levy that is proposed for conversion, and the purposes for which such funds shall be used; and

(f) Prior to January 1, 2011, the election notice shall be given, the election shall be conducted and the returns canvassed as provided in chapter 4, title 33, Idaho Code. On and after January 1, 2011, the election notice shall be given, the election shall be held subject to the provisions of section 34-106, Idaho Code, and conducted and the returns canvassed as provided in title 34, Idaho Code; and

(g) The dollar amount to be converted and collected shall be approved only if a majority of the electors voting in the election are in favor; and

(h) Upon expiration of the term of conversion, the supplemental levy shall revert to the previously approved plant facilities levy for any approved years remaining on the balance of its term; and

(i) Any years in which a previously approved plant facilities levy is converted to a supplemental levy pursuant to this subsection shall count against the years for which the plant facilities levy was approved; and

(j) If a majority of the electors voting in the election fail to vote in favor, the previously approved plant facilities levy shall not be affected.

History.

1963, ch. 13, § 93, p. 27; am. 1970, ch. 115, § 1, p. 276; am. 1975, ch. 220, § 1, p. 612; am. 1979, ch. 254, § 3, p. 661; am. 1981, ch. 224, § 2, p. 433; am. 1987, ch. 256, § 4, p. 519; am. 1992, ch. 276, § 1, p. 850; am. 1994, ch. 299, § 1, p. 946; am. 1996, ch. 322, § 21, p. 1029; am. 2009, ch. 341, § 47, p. 993; am. 2010, ch. 326, § 2, p. 863; am. 2011, ch. 299, § 3, p. 853.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in the last sentence in the second paragraph, inserted "held subject to the provisions of section 34-106, Idaho Code, and" and substituted "title 34, Idaho Code" for "chapter 4, title 33, Idaho Code."

The 2010 amendment, by ch. 326, added subsection 4.

The 2011 amendment, by ch. 299, substituted "per support unit funding for salary-based apportionment and discretionary funds has decreased, in the aggregate, from the prior fiscal year" for "conditions exist for all qualifying school districts to declare financial emergencies, pursuant to section 33-522, Idaho Code", in the introductory paragraph of subsection 4. and substituted "the condition stated in subsection 4. of this section exists" for "the statewide conditions exist for all qualifying school districts to declare financial emergencies, pursuant to section 33-522, Idaho Code" in paragraph 4.(b).

Compiler's Notes.

Section 1 of S.L. 2011, ch. 299 provided: "The provisions of Section 33-1019, Idaho Code, notwithstanding, for the period July 1, 2011, through June 30, 2012, only, the current fiscal year's amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows:

"(1) Subtract from the local maintenance match requirement all plant facility levy funds levied for tax year 2011.

"(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any

recommendations for which the least expensive remediation solution is the replacement of the building. School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education."

"School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education."

Section 4 of S.L. 2011, ch. 299 provided "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Section 1 of S.L. 2013, ch 300 provided: "The provisions of Section 33-1019, Idaho Code, notwithstanding, for the period July 1, 2013, through June 30, 2014, only, two-thirds (2/3) of the current fiscal year's amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows:

"(1) Subtract from two-thirds (2/3) of the local maintenance match requirement two-thirds (2/3) of all plant facility levy funds levied for tax year 2012.

"(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building. School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education."

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 6 of S.L. 2010, ch. 326 provided that the act should take effect on and after January 1, 2011

Section 5 of S.L. 2011, ch 299 declared an emergency. Approved April 11, 2011.

CHAPTER 9

SCHOOL FUNDS

SECTION.

33-905. School district building account — Payments to account — Moneys appropriated to state board — Application for moneys — Payments to districts — Reports on applications — Uses of moneys.

33-909. Public school facilities cooperative funding program — Fund created.

33-910. Secure rural schools and community self-determination act phase out funding. [Repealed.]

33-905. School district building account — Payments to account — Moneys appropriated to state board — Application for moneys — Payments to districts — Reports on applications — Uses of moneys. — (1) The state of Idaho, in order to fulfill its responsibility to establish and maintain a general, uniform and thorough system of public, free common schools, hereby creates and establishes the school district building account in the state treasury. The school district building account shall have paid into it such appropriations or revenues as may be provided by law.

(2) By not later than August 31, moneys in the account pursuant to distribution from section 67-7434, Idaho Code, the lottery dividends and interest earned thereon, shall be distributed to each of the several school districts, in the proportion that the average daily attendance of that district for the previous school year bears to the total average daily attendance of the state during the previous school year. For the purposes of this subsection

(2) only, the Idaho school for the deaf and the blind shall be considered a school district, and shall receive a distribution based upon the average daily attendance of the school. Average daily attendance shall be calculated as provided in section 33-1002(3), Idaho Code. For the purposes of this subsection (2) only, any school for the deaf and the blind operated by the Idaho bureau of educational services for the deaf and the blind shall be considered a school district, and shall receive a distribution based upon the average daily attendance of the school.

(3) Any other state moneys that may be made available shall be distributed to meet the requirements of section 33-1019, Idaho Code. If the amount of such funds exceeds the amount needed to meet the provisions of section 33-1019, Idaho Code, then the excess balance shall be transferred to the public education stabilization fund.

(4) All payments from the school district building account shall be paid out directly to the school district in warrants drawn by the state controller upon presentation of proper vouchers from the state board of education. Pending payments out of the school district building account, the moneys in the account shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other idle moneys in the state treasury. Interest earned on the investments shall be returned to the school district building account.

(5) Payments from the school district building account received by a school district shall be used by the school district for the purposes authorized in section 33-1019, Idaho Code, up to the level of the state match so required. Any payments from the school district building account received by a school district that are in excess of the state match requirements of section 33-1019, Idaho Code, may be used by the school district for the purposes authorized in section 33-1102, Idaho Code.

History.

I.C., § 33-905, as added by 1977, ch. 67, § 1, p. 128; am. 1988, ch. 251, § 1, p. 484; am. 1989, ch. 123, § 1, p. 271; am. 1990, ch. 377, §§ 2, 5, p. 1041; am. 1991, ch. 110, § 2, p. 235; am. 1994, ch. 180, § 45, p. 420; am. 1994, ch. 345, § 1, p. 1088; am. 1996, ch. 121, § 1, p. 435; am. 1998, ch. 41, § 1, p. 173; am. 2006, ch. 311, § 3, p. 957; am. 2006 (1st E.S.), ch. 1, § 6; am. 2009, ch. 168, § 2, p. 502.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 168, added the last sentence in subsection (2).

33-909. Public school facilities cooperative funding program — Fund created. — (1) In fulfillment of the constitutional requirement to provide a general, uniform and thorough system of public, free common schools, it is the intent of the state of Idaho to advance its responsibility for providing a safe environment conducive to learning by providing a public school facilities funding program to enable qualifying school districts to address unsafe facilities identified as unsafe under the standards of the Idaho uniform school building safety act.

(2) Participation in the program, for the purpose of obtaining state

financial support to abate identified school building safety hazards, requires submission of an application to the public school facilities cooperative funding program panel. Application can be made by:

(a) Any school district that has failed to approve at least one (1) or more bond levies for the repair, renovation or replacement of existing unsafe facilities, within the two (2) year period immediately preceding submission of the application; or

(b) The administrator of the division of building safety, for a school district that has failed to address identified unsafe facilities as provided in chapter 80, title 39, Idaho Code.

(3) There is hereby created within the office of the state board of education the Idaho public school facilities cooperative funding program panel, hereafter referred to as the panel. The panel shall consist of the administrator of the division of building safety, the administrator of the division of public works and the executive director of the state board of education, or a designee appointed by a panel member. It shall be the duty of the panel to consider all applications made to it, and to approve, modify or reject an application based on the most economical solution to the problem, as analyzed within a projected twenty (20) year time frame.

(4) The application shall contain the following information:

(a) The identified school building safety hazards and such other information necessary to document the deficiencies;

(b) The school district's plan for abating the defects, including costs and sources and amounts of revenue available to the school district;

(c) The market value for assessment purposes of the school district; and

(d) A detailed accounting of all bond and plant facility levies of the school district and the revenues raised by such levies.

For applications initiated by the administrator of the division of building safety pursuant to subsection (2)(b) of this section, the school district shall provide the information required in this subsection (4) if such information is not available to the administrator.

(5) If the panel determines that it requires additional plans and information, it may authorize the expenditure of up to one hundred fifty thousand dollars ($150,000) per application from the public school facilities cooperative fund for the procurement thereof. In considering an application, the panel shall determine whether the plan as proposed is acceptable, or is acceptable with modifications as determined by the panel, or should be rejected. If the application is approved or approved with modifications, any expenditures authorized by the panel pursuant to this subsection shall be added to the project. The panel shall notify the applicant of its decision, in writing, within ninety (90) days of receiving the application. At the same time the panel notifies the applicant, the panel shall send notification of an approved application or a modified application to the state board of education, along with the panel's specifications for the project and its cost.

(6) If an application received from a school district is accepted or modified by the panel, the local board of trustees of that school district, at the next election held pursuant to section 34-106, Idaho Code, shall submit the question to the qualified electors of the school district of whether to approve a bond in the amount of the cost of the project as approved by the panel.

(7) Within thirty-five (35) calendar days of receiving notification from the panel that an application submitted by the administrator of the division of building safety pursuant to subsection (2)(b) of this section has been approved or modified by the panel, or within thirty-five (35) calendar days of receiving certification from the panel that the question submitted to the electorate pursuant to subsection (6) of this section was not approved in the election, the state board of education shall appoint a district supervisor for interim state supervision of the local school district. The district supervisor shall be responsible for ensuring that the project, as approved by the panel, is completed and shall regularly report to the panel in a manner as determined by the panel upon approval of the project. The district supervisor shall also have the authority granted to said position by the provisions of section 6-2212, Idaho Code. A district supervisor's term of service shall continue for the duration of the project, and such person appointed as a district supervisor shall serve at the pleasure of the state board of education.

(8) The abatement of unsafe public school facilities through the public school facilities cooperative funding program shall be performed exclusively in accordance with the regular permitting, plan review and inspection requirements of the division of building safety. The Idaho building code board shall function as a board of appeals for the division of building safety for such construction in accordance with the provisions of section 39-4107, Idaho Code. Upon successful completion of the construction in accordance with applicable building codes, a certificate of occupancy shall be issued by the administrator of the division of building safety. Upon issuance of a certificate of occupancy, responsibility for ensuring the safety of the facility or portion thereof so constructed will then be returned to the school district and responsibility for ensuring subsequent compliance with building codes returned to the authority having jurisdiction.

(9) Upon approval of an application or a modified application submitted by the administrator of the division of building safety pursuant to subsection (2)(b) of this section, or upon receipt of certification from the county that the question submitted to the electorate pursuant to subsection (6) of this section was not approved in the election, the panel shall certify the cost of the project, as approved by the panel, to the state department of education.

(a) The total cost of the project shall initially be paid by the state from the public school facilities cooperative fund. If the district supervisor determines that the amount approved by the panel is insufficient to complete the project in a satisfactory manner, the panel may request a legislative appropriation of additional moneys from the public school facilities cooperative fund. If such an appropriation is approved, these additional moneys shall be added to the cost of the project.

(b) The district's share of costs that may be repaid through the levy provisions of this section shall not exceed the district's share of bond payment costs as calculated for the bond levy equalization support program in the fiscal year in which the application is made. Interest shall be charged on the unpaid balance of the district's share of costs, as such balance exists at the end of each fiscal year, at the rate of interest earned by the state treasurer on the investment of idle funds in that fiscal year.

(c) It shall be the responsibility of the state department of education to calculate a state-authorized plant facilities levy rate in accordance with the provisions of subsection (10) of this section, which, when imposed over a maximum period not to exceed twenty (20) years, may yield the revenues needed to repay the school district's share of the cost of the project.

(d) The levy rate calculated by the state department of education shall be certified by the department to the county or counties wherein the boundaries of the school district are contained, for assessment of the levy and collection of the revenues by such county or counties in the manner provided by law. The revenues collected by imposition of the state-authorized plant facilities levy shall be remitted to the state treasurer for deposit to the public school facilities cooperative fund.

(10) The annual state-authorized plant facilities levy rate shall be limited to the greater of:

(a) The difference between the school district's combined bond and plant facilities levy rates, and the statewide average bond and plant facility levy rates; or

(b) The statewide average plant facility levy rate.

The initial levy rate so calculated shall be established as the minimum levy rate that shall be imposed for the amount of time required to reimburse the state for the school district's share of the project cost, but not to exceed twenty (20) years, even if this period would not provide reimbursement of the entire amount of the school district's share of the cost of the project. The state department of education is authorized and directed to recalculate the levy rate on an annual basis and is authorized to increase or decrease the levy rate according to the scheduled payback, but the levy rate shall not be less than the levy rate initially imposed. Provided however, if the levy rate calculated is estimated to raise more money than would be necessary to repay the district's share of costs, then the state department of education shall certify to the county or counties wherein the boundaries of the school district are contained, the moneys necessary to repay the district's share of costs.

(11) There is hereby created in the state treasury a public school facilities cooperative fund. The fund shall contain such moneys as may be directed pursuant to appropriation. Moneys in the fund shall be used exclusively to finance the public school facilities cooperative funding program and are hereby continuously appropriated for such purposes as authorized by this section. Moneys in the fund shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other idle moneys in the state treasury. Interest earned on the investments shall be credited to the school district building account.

History.

I.C., § 33-909, as added by 2006, ch. 311, § 6, p. 957; am. 2012, ch. 221, § 1, p. 604; am. 2013, ch. 32, § 1, p. 70.

STATUTORY NOTES

Amendments.

The 2012 amendment by ch. 221, in subsection (5), added the first and third sentences and substituted "ninety (90) days" for "sixty (60) days" and, in paragraph (8)(a), added the second and third sentences.

The 2013 amendment, by ch. 32, added present subsection (8) and redesignated former subsections (8) to (10) as present subsections (9) to (11) and substituted "subsection (10)" for "subsection (9)" in paragraph (9)(c).

33-910. Secure rural schools and community self-determination act phase out funding. [Repealed.]

Repealed by S.L. 2008, ch. 384, § 3, effective July 1, 2012.

History.

I.C., § 33-910, as added by 2008, ch. 384, § 2, p. 1057.

CHAPTER 10

FOUNDATION PROGRAM — STATE AID — APPORTIONMENT

SECTION.
33-1002. Educational support program. [Effective April 11, 2013 through June 30, 2013.]
33-1002. Educational support program. [Effective July 1, 2013 through June 30, 2014.]
33-1002. Educational support program. [Effective July 1, 2014.]
33-1002A. Fractional average daily attendance. [Null and void.]
33-1002B. Pupil tuition-equivalency allowances.
33-1002C. Summer school program support units — Alternative secondary school — Juvenile detention facility.
33-1003. Special application of educational support program.
33-1004. Staff allowance. [Effective April 11, 2013 through June 30, 2013.]
33-1004. Staff allowance. [Effective July 1, 2013 through June 30, 2014.]
33-1004. Staff allowance. [Effective July 1, 2014.]
33-1004A. Experience and education multiplier. [Effective April 11, 2013 through June 30, 2013.]
33-1004A. Experience and education multiplier. [Effective July 1, 2013.]
33-1004E. District's salary-based apportionment. [Effective April 11, 2013 through June 30, 2013.]
33-1004E. District's salary-based apportionment. [Effective July 1, 2013.]
33-1004F. Obligations to retirement and social security benefits. [Effective until July 1, 2014.]
SECTION.
33-1004F. Obligations to retirement and social security benefits. [Effective July 1, 2014.]
33-1004G. Early retirement incentive — Administrative staff excluded . [Repealed.]
33-1004H. Employing retired teachers and administrators.
33-1004I. Pay for performance — Hard to fill positions — Leadership awards. [Null and void.]
33-1004J. Differential pay. [Repealed effective July 1, 2014.]
33-1006. Transportation support program.
33-1006A. Pupil transportation audits.
33-1007. Exceptional education program report.
33-1009. Payments from the public school income fund.
33-1019. Allocation for school building maintenance required.
33-1020. Idaho digital learning academy funding.
33-1021. Math and science requirement. [Effective April 11, 2013 through June 30, 2013.]
33-1021. Math and science requirement. [Effective July 1, 2013.]
33-1022. Public school technology. [Effective April 11, 2013 through June 30, 2013.]
[33-1023] 33-1021. Moneys provided from unanticipated public charter school closure.
33-1024. Online course portal.

33-1002. Educational support program. [Effective April 11, 2013 through June 30, 2013.] — The educational support program is calculated as follows:

(1) State Educational Support Funds. Add the state appropriation, including the moneys available in the public school income fund, together with all miscellaneous revenues to determine the total state funds.

(2) From the total state funds subtract the following amounts needed for state support of special programs provided by a school district:

(a) Pupil tuition-equivalency allowances as provided in section 33-1002B, Idaho Code;

(b) Transportation support program as provided in section 33-1006, Idaho Code;

(c) Feasibility studies allowance as provided in section 33-1007A, Idaho Code;

(d) The approved costs for border district allowance, provided in section 33-1403, Idaho Code, as determined by the state superintendent of public instruction;

(e) The approved costs for exceptional child approved contract allowance, provided in subsection 2. of section 33-2004, Idaho Code, as determined by the state superintendent of public instruction;

(f) Certain expectant and delivered mothers allowance as provided in section 33-2006, Idaho Code;

(g) Salary-based apportionment calculated as provided in sections 33-1004 through 33-1004F, Idaho Code;

(h) Unemployment insurance benefit payments according to the provisions of section 72-1349A, Idaho Code;

(i) For expenditure as provided by the public school technology program as provided in section 33-1022, Idaho Code;

(j) For employee severance payments as provided in section 33-521, Idaho Code;

(k) For distributions to the Idaho digital learning academy as provided in section 33-1020, Idaho Code;

(*l*) For dual credit courses as provided in section 33-1626, Idaho Code;

(m) For additional math and science courses for high school students as provided for in section 33-1021, Idaho Code;

(n) For the support of provisions that provide a safe environment conducive to student learning and maintain classroom discipline, an allocation of $300 per support unit; and

(o) Any additional amounts as required by statute to effect administrative adjustments or as specifically required by the provisions of any bill of appropriation;

to secure the total educational support distribution funds.

(3) Average Daily Attendance. The total state average daily attendance shall be the sum of the average daily attendance of all of the school districts of the state. The state board of education shall establish rules setting forth the procedure to determine average daily attendance and the time for, and method of, submission of such report. Average daily attendance calculation shall be carried out to the nearest hundredth. Computation of average daily

attendance shall also be governed by the provisions of section 33-1003A, Idaho Code.

(4) Support Units. The total state support units shall be determined by using the tables set out hereafter called computation of kindergarten support units, computation of elementary support units, computation of secondary support units, computation of exceptional education support units, and computation of alternative school secondary support units. The sum of all of the total support units of all school districts of the state shall be the total state support units.

COMPUTATION OF KINDERGARTEN SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Units Allowed
41 or more	40	1 or more as computed
31 — 40.99 ADA	—	1
26 — 30.99 ADA	—	.85
21 — 25.99 ADA	—	.75
16 — 20.99 ADA	—	.6
8 — 15.99 ADA	—	.5
1 — 7.99 ADA	—	count as elementary

COMPUTATION OF ELEMENTARY SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
300 or more ADA	15	
	... 23 ... grades 4, 5 & 6	
	... 22 ... grades 1, 2 & 3 ... 1994-95	
	... 21 ... grades 1, 2 & 3 ... 1995-96	
	... 20 ... grades 1, 2 & 3 ... 1996-97 and each year thereafter.	
160 to 299.99 ADA	20	8.4
110 to 159.99 ADA	19	6.8
71.1 to 109.99 ADA	16	4.7
51.7 to 71.0 ADA	15	4.0
33.6 to 51.6 ADA	13	2.8
16.6 to 33.5 ADA	12	1.4
1.0 to 16.5 ADA	n/a	1.0

COMPUTATION OF SECONDARY SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
750 or more	18.5	47
400 — 749.99 ADA	16	28
300 — 399.99 ADA	14.5	22
200 — 299.99 ADA	13.5	17
100 — 199.99 ADA	12	9
99.99 or fewer	Units allowed as follows:	
Grades 7—12		8
Grades 9—12		6
Grades 7—9		1 per 14 ADA
Grades 7— 8		1 per 16 ADA

COMPUTATION OF EXCEPTIONAL EDUCATION SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
14 or more	14.5	1 or more as computed
12 — 13.99	—	1
8 — 11.99	—	.75
4 — 7.99	—	.5
1 — 3.99	—	.25

COMPUTATION OF ALTERNATIVE SCHOOL SECONDARY SUPPORT UNITS

Pupils in Attendance	Attendance Divisor	Minimum Units Allowed
12 or more	12	1 or more as computed

In applying these tables to any given separate attendance unit, no school district shall receive less total money than it would receive if it had a lesser average daily attendance in such separate attendance unit. In applying the kindergarten table to a kindergarten program of less days than a full school year, the support unit allowance shall be in ratio to the number of days of a full school year. The tables for exceptional education and alternative school secondary support units shall be applicable only for programs approved by the state department of education following rules established by the state board of education. Moneys generated from computation of support units for alternative schools shall be utilized for alternative school programs. School district administrative and facility costs may be included as part of the alternative school expenditures.

(5) State Distribution Factor per Support Unit. Divide educational support program distribution funds, after subtracting the amounts necessary to pay the obligations specified in subsection (2) of this section, by the total state support units to secure the state distribution factor per support unit.

(6) District Support Units. The number of support units for each school district in the state shall be determined as follows:

(a)(i) Divide the actual average daily attendance, excluding students approved for inclusion in the exceptional child educational program, for the administrative schools and each of the separate schools and attendance units by the appropriate divisor from the tables of support units in this section, then add the quotients to obtain the district's support units allowance for regular students, kindergarten through grade 12 including alternative school secondary students. Calculations in application of this subsection shall be carried out to the nearest hundredth.

(ii) Divide the combined totals of the average daily attendance of all preschool, kindergarten, elementary, secondary, juvenile detention center students and students with disabilities approved for inclusion in the exceptional child program of the district by the appropriate divisor from the table for computation of exceptional education support units to

obtain the number of support units allowed for the district's approved exceptional child program. Calculations for this subsection shall be carried out to the nearest hundredth when more than one (1) unit is allowed.

(iii) The total number of support units of the district shall be the sum of the total support units for regular students, subsection (6)(a)(i) of this section, and the support units allowance for the approved exceptional child program, subsection (6)(a)(ii) of this section.

(b) Total District Allowance Educational Program. Multiply the district's total number of support units, carried out to the nearest hundredth, by the state distribution factor per support unit and to this product add the approved amount of programs of the district provided in subsection (2) of this section to secure the district's total allowance for the educational support program.

(c) District Share. The district's share of state apportionment is the amount of the total district allowance, subsection (6)(b) of this section.

(d) Adjustment of District Share. The contract salary of every noncertificated teacher shall be subtracted from the district's share as calculated from the provisions of subsection (6)(c) of this section.

(7) Property Tax Computation Ratio. In order to receive state funds pursuant to this section a charter district shall utilize a school maintenance and operation property tax computation ratio for the purpose of calculating its maintenance and operation levy, that is no greater than that which it utilized in tax year 1994, less four-tenths of one percent (.4%). As used herein, the term "property tax computation ratio" shall mean a ratio determined by dividing the district's certified property tax maintenance and operation budget by the actual or adjusted market value for assessment purposes as such values existed on December 31, 1993. Such maintenance and operation levy shall be based on the property tax computation ratio multiplied by the actual or adjusted market value for assessment purposes as such values existed on December 31 of the prior calendar year.

History.

I.C., § 33-1002, as added by 1995, ch. 306, § 4, p. 1057; am. 1995, ch. 306, § 5, p. 1057; am. 1996, ch. 146, § 1, p. 478; am. 1996, ch. 322, § 23, p. 1029; am. 1996, ch. 408, § 1, p. 1350; am. 1998, ch. 1, § 103, p. 3; am. 1999, ch. 329, § 30, p. 852; am. 2000, ch. 266, § 2, p. 743; am. 2003, ch. 299, § 4, p. 814; am. 2003, ch. 372, § 9, p. 986; am. 2005, ch. 257, § 8, p. 789; am. 2006, ch. 418, § 7, p. 1291; am. 2006 (1st E.S.), ch. 1, § 8; am. 2007, ch. 79, § 5, p. 209; am. 2007, ch. 353, § 11, p. 1045; am. 2008, ch. 27, § 8, p. 46; am. 2010, ch. 235, § 13, p. 542; am. 2013, ch. 294, § 1, p. 776; am. 2013, ch. 340, § 1, p. 890.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, in paragraph (6)(a)(ii), deleted "handicapped" following "preschool" and inserted "and students with disabilities."

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 294, substituted "nearest hundredth" for "nearest tenth" three times in subsection (6).

The 2013 amendment, by ch. 340, inserted "as provided in section 33-1022, Idaho Code" at the end of paragraph (2)(i), added present paragraphs (2)(*l*) and (m), and redesignated the subsequent paragraphs accordingly in

subsection (2).

Compiler's Notes.

For this section as effective July 1, 2013 through June 30, 2014, and effective July 1, 2014, see the following sections, also numbered § 33-1002.

This section was amended by S.L. 2011, ch. 247, effective April 8, 2011 and April 9, 2012. The amendments by S.L. 2011, ch. 247 were the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendments, and the amendment by S.L. 2012, ch. 340, became null and void, and this section returned to its pre-2011 provisions, prior to the 2013 amendments.

Section 8 of S.L. 2013, ch. 340 provided "The provisions of this act shall be null, void and of no force and effect after June 30, 2013."

Effective Dates.

Section 2 of S.L. 2013, ch. 294 declared an emergency. Approved April 9, 2013.

Section 8 of S.L. 2013, ch. 340 declared an emergency. Approved April 11, 2013.

33-1002. Educational support program. [Effective July 1, 2013 through June 30, 2014.] — The educational support program is calculated as follows:

(1) State Educational Support Funds. Add the state appropriation, including the moneys available in the public school income fund, together with all miscellaneous revenues to determine the total state funds.

(2) From the total state funds subtract the following amounts needed for state support of special programs provided by a school district:

(a) Pupil tuition-equivalency allowances as provided in section 33-1002B, Idaho Code;

(b) Transportation support program as provided in section 33-1006, Idaho Code;

(c) Feasibility studies allowance as provided in section 33-1007A, Idaho Code;

(d) The approved costs for border district allowance, provided in section 33-1403, Idaho Code, as determined by the state superintendent of public instruction;

(e) The approved costs for exceptional child approved contract allowance, provided in subsection 2. of section 33-2004, Idaho Code, as determined by the state superintendent of public instruction;

(f) Certain expectant and delivered mothers allowance as provided in section 33-2006, Idaho Code;

(g) Salary-based apportionment calculated as provided in sections 33-1004 through 33-1004F, Idaho Code;

(h) Unemployment insurance benefit payments according to the provisions of section 72-1349A, Idaho Code;

(i) For expenditure as provided by the public school technology program;

(j) For employee severance payments as provided in section 33-521, Idaho Code;

(k) For distributions to the Idaho digital learning academy as provided in section 33-1020, Idaho Code;

(*l*) For charter school facilities funds and reimbursements paid pursuant to section 33-5208(5), Idaho Code;

[(m)](*l*) For differential pay as provided in section 33-1004J, Idaho Code;

[(n)](m) For technology pilot projects as provided in section 33-4811, Idaho Code;

[(o)](*l*) For an online course portal as provided for in section 33-1024, Idaho Code;

[(p)](m) For advanced opportunities as provided for in section 33-1626, Idaho Code;

[(q)](n) For the "8 in 6 Program" as provided for in section 33-1628, Idaho Code;

[(r)](*l*) For additional math and science courses for high school students as provided in section 33-1021, Idaho Code;

[(s)](m)(o) For the support of provisions that provide a safe environment conducive to student learning and maintain classroom discipline, an allocation of $300 per support unit; and

[(t)](p) Any additional amounts as required by statute to effect administrative adjustments or as specifically required by the provisions of any bill of appropriation;

to secure the total educational support distribution funds.

(3) Average Daily Attendance. The total state average daily attendance shall be the sum of the average daily attendance of all of the school districts of the state. The state board of education shall establish rules setting forth the procedure to determine average daily attendance and the time for, and method of, submission of such report. Average daily attendance calculation shall be carried out to the nearest hundredth. Computation of average daily attendance shall also be governed by the provisions of section 33-1003A, Idaho Code.

(4) Support Units. The total state support units shall be determined by using the tables set out hereafter called computation of kindergarten support units, computation of elementary support units, computation of secondary support units, computation of exceptional education support units, and computation of alternative school secondary support units. The sum of all of the total support units of all school districts of the state shall be the total state support units.

COMPUTATION OF KINDERGARTEN SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Units Allowed
41 or more	40	1 or more as computed
31 — 40.99 ADA	—	1
26 — 30.99 ADA	—	.85
21 — 25.99 ADA	—	.75
16 — 20.99 ADA	—	.6
8 — 15.99 ADA	—	.5
1 — 7.99 ADA	—	count as elementary

COMPUTATION OF ELEMENTARY SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
300 or more ADA	15	
	... 23 ... grades 4, 5 & 6.....	
	... 22 ... grades 1, 2 & 3 ... 1994-95	
	... 21 ... grades 1, 2 & 3 ... 1995-96	
	... 20 ... grades 1, 2 & 3 ... 1996-97 and each year thereafter.	
160 to 299.99 ADA	20	8.4
110 to 159.99 ADA	19	6.8
71.1 to 109.99 ADA	16	4.7
51.7 to 71.0 ADA	15	4.0
33.6 to 51.6 ADA	13	2.8
16.6 to 33.5 ADA	12	1.4
1.0 to 16.5 ADA	n/a	1.0

COMPUTATION OF SECONDARY SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
750 or more	18.5	.47
400 — 749.99 ADA	16	.28
300 — 399.99 ADA	14.5	.22
200 — 299.99 ADA	13.5	.17
100 — 199.99 ADA	12	9
99.99 or fewer	Units allowed as follows:	
Grades 7—12		8
Grades 9—12		6
Grades 7—9		1 per 14 ADA
Grades 7— 8		1 per 16 ADA

COMPUTATION OF EXCEPTIONAL EDUCATION SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
14 or more	14.5	1 or more as computed
12 — 13.99	—	1
8 — 11.99	—	.75
4 — 7.99	—	.5
1 — 3.99	—	.25

COMPUTATION OF ALTERNATIVE SCHOOL SECONDARY SUPPORT UNITS

Pupils in Attendance	Attendance Divisor	Minimum Units Allowed
12 or more	12	1 or more as computed

In applying these tables to any given separate attendance unit, no school district shall receive less total money than it would receive if it had a lesser average daily attendance in such separate attendance unit. In applying the kindergarten table to a kindergarten program of less days than a full school

year, the support unit allowance shall be in ratio to the number of days of a full school year. The tables for exceptional education and alternative school secondary support units shall be applicable only for programs approved by the state department of education following rules established by the state board of education. Moneys generated from computation of support units for alternative schools shall be utilized for alternative school programs. School district administrative and facility costs may be included as part of the alternative school expenditures.

(5) State Distribution Factor per Support Unit. Divide educational support program distribution funds, after subtracting the amounts necessary to pay the obligations specified in subsection (2) of this section, by the total state support units to secure the state distribution factor per support unit.

(6) District Support Units. The number of support units for each school district in the state shall be determined as follows:

(a)(i) Divide the actual average daily attendance, excluding students approved for inclusion in the exceptional child educational program, for the administrative schools and each of the separate schools and attendance units by the appropriate divisor from the tables of support units in this section, then add the quotients to obtain the district's support units allowance for regular students, kindergarten through grade 12 including alternative school secondary students. Calculations in application of this subsection shall be carried out to the nearest hundredth.

(ii) Divide the combined totals of the average daily attendance of all preschool, kindergarten, elementary, secondary, juvenile detention center students and students with disabilities approved for inclusion in the exceptional child program of the district by the appropriate divisor from the table for computation of exceptional education support units to obtain the number of support units allowed for the district's approved exceptional child program. Calculations for this subsection shall be carried out to the nearest hundredth when more than one (1) unit is allowed.

(iii) The total number of support units of the district shall be the sum of the total support units for regular students, subsection (6)(a)(i) of this section, and the support units allowance for the approved exceptional child program, subsection (6)(a)(ii) of this section.

(b) Total District Allowance Educational Program. Multiply the district's total number of support units, carried out to the nearest hundredth, by the state distribution factor per support unit and to this product add the approved amount of programs of the district provided in subsection (2) of this section to secure the district's total allowance for the educational support program.

(c) District Share. The district's share of state apportionment is the amount of the total district allowance, subsection (6)(b) of this section.

(d) Adjustment of District Share. The contract salary of every noncertificated teacher shall be subtracted from the district's share as calculated from the provisions of subsection (6)(c) of this section.

(7) Property Tax Computation Ratio. In order to receive state funds pursuant to this section a charter district shall utilize a school maintenance

and operation property tax computation ratio for the purpose of calculating its maintenance and operation levy, that is no greater than that which it utilized in tax year 1994, less four-tenths of one percent (.4%). As used herein, the term "property tax computation ratio" shall mean a ratio determined by dividing the district's certified property tax maintenance and operation budget by the actual or adjusted market value for assessment purposes as such values existed on December 31, 1993. Such maintenance and operation levy shall be based on the property tax computation ratio multiplied by the actual or adjusted market value for assessment purposes as such values existed on December 31 of the prior calendar year.

History.

I.C., § 33-1002, as added by 1995, ch. 306, § 4, p. 1057; am. 1995, ch. 306, § 5, p. 1057; am. 1996, ch. 146, § 1, p. 478; am. 1996, ch. 322, § 23, p. 1029; am. 1996, ch. 408, § 1, p. 1350; am. 1998, ch. 1, § 103, p. 3; am. 1999, ch. 329, § 30, p. 852; am. 2000, ch. 266, § 2, p. 743; am. 2003, ch. 299, § 4, p. 814; am. 2003, ch. 372, § 9, p. 986; am. 2005, ch. 257, § 8, p. 789; am. 2006, ch. 418, § 7, p. 1291; am. 2006 (1st E.S.), ch. 1, § 8; am. 2007, ch. 79, § 5, p. 209; am. 2007, ch. 353, § 11, p. 1045; am. 2008, ch. 27, § 8, p. 46; am. 2010, ch. 235, § 13, p. 542; am. 2013, ch. 98, § 1, p. 236; am. 2013, ch. 154, § 1, p. 360; am. 2013, ch. 294, § 1, p. 776; am. 2013, ch. 338, § 1, p. 877; am. 2013, ch. 342, § 1, p. 900.

STATUTORY NOTES

Amendments.

This section was amended by five 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 98, added the paragraph designated as (2)[(r)] and redesignated the subsequent paragraphs in subsection (2) accordingly.

The 2013 amendment, by ch. 154, inserted the paragraphs designated as (2)[(o)], (2)[(p)], and (2)[(q)] and redesignated the subsequent paragraphs in subsection (2) accordingly.

The 2013 amendment, by ch. 294, substituted "nearest hundredth" for "nearest tenth" three times in subsection (6).

The 2013 amendment, by ch. 338, § 1, added paragraphs designated as (2)[(m)] and (2)[(n)] and redesignated the subsequent paragraphs in subsection (2) accordingly.

The 2013 amendment, by ch. 342, added paragraph (2)(*l*) and redesignated the subsequent paragraphs in subsection (2) accordingly.

Legislative Intent.

Section 30 of S.L. 2013, ch. 326 provided: "It is legislative intent that the State Department of Education shall compile information concerning school district and charter school expenditures of funds pursuant to the safe school environment and student learning provisions of Section 33-1002(2)(l), Idaho Code, for fiscal year 2014 and post such information to the department's website no later than December 31, 2014."

Compiler's Notes.

For this section as effective April 11, 2013 through June 30, 2013, see the preceding section and for this section as effective July 1, 2014, see the following section, both numbered § 33-1002.

Section 8 of S.L. 2013, ch. 340 provided "The provisions of this act shall be null, void and of no force and effect after June 30, 2013."

Effective Dates.

Section 2 of S.L. 2013, ch. 294 declared an emergency. Approved April 9, 2013.

Section 9 of S.L. 2013, ch. 338 provided that sections 1 [this section], 3, 5, 6, and 8 of the act should take effect July 1, 2013.

Section 8 of S.L. 2013, ch. 340 declared an emergency. Approved April 11, 2013.

33-1002. Educational support program. [Effective July 1, 2014.] — The educational support program is calculated as follows:

(1) State Educational Support Funds. Add the state appropriation, including the moneys available in the public school income fund, together with all miscellaneous revenues to determine the total state funds.

(2) From the total state funds subtract the following amounts needed for state support of special programs provided by a school district:

(a) Pupil tuition-equivalency allowances as provided in section 33-1002B, Idaho Code;

(b) Transportation support program as provided in section 33-1006, Idaho Code;

(c) Feasibility studies allowance as provided in section 33-1007A, Idaho Code;

(d) The approved costs for border district allowance, provided in section 33-1403, Idaho Code, as determined by the state superintendent of public instruction;

(e) The approved costs for exceptional child approved contract allowance, provided in subsection 2. of section 33-2004, Idaho Code, as determined by the state superintendent of public instruction;

(f) Certain expectant and delivered mothers allowance as provided in section 33-2006, Idaho Code;

(g) Salary-based apportionment calculated as provided in sections 33-1004 through 33-1004F, Idaho Code;

(h) Unemployment insurance benefit payments according to the provisions of section 72-1349A, Idaho Code;

(i) For expenditure as provided by the public school technology program;

(j) For employee severance payments as provided in section 33-521, Idaho Code;

(k) For distributions to the Idaho digital learning academy as provided in section 33-1020, Idaho Code;

(l) For charter school facilities funds and reimbursements paid pursuant to section 33-5208(5), Idaho Code;

[(m)](*l*) For an online course portal as provided for in section 33-1024, Idaho Code;

[(n)](m) For advanced opportunities as provided for in section 33-1626, Idaho Code;

[(o)](*l*) For the "8 in 6 Program" as provided for in section 33-1628, Idaho Code;

[(p)](m) For additional math and science courses for high school students as provided in section 33-1021, Idaho Code;

[(q)](m)(n) For the support of provisions that provide a safe environment conducive to student learning and maintain classroom discipline, an allocation of $300 per support unit; and

[(r)](*l*) Any additional amounts as required by statute to effect administrative adjustments or as specifically required by the provisions of any bill of appropriation;

to secure the total educational support distribution funds.

(3) Average Daily Attendance. The total state average daily attendance shall be the sum of the average daily attendance of all of the school districts of the state. The state board of education shall establish rules setting forth the procedure to determine average daily attendance and the time for, and method of, submission of such report. Average daily attendance calculation shall be carried out to the nearest hundredth. Computation of average daily attendance shall also be governed by the provisions of section 33-1003A, Idaho Code.

(4) Support Units. The total state support units shall be determined by using the tables set out hereafter called computation of kindergarten support units, computation of elementary support units, computation of secondary support units, computation of exceptional education support units, and computation of alternative school secondary support units. The sum of all of the total support units of all school districts of the state shall be the total state support units.

COMPUTATION OF KINDERGARTEN SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Units Allowed
41 or more	40	1 or more as computed
31 — 40.99 ADA	—	1
26 — 30.99 ADA	—	.85
21 — 25.99 ADA	—	.75
16 — 20.99 ADA	—	.6
8 — 15.99 ADA	—	.5
1 — 7.99 ADA	—	count as elementary

COMPUTATION OF ELEMENTARY SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
300 or more ADA		15
	... 23 ... grades 4, 5 & 6	
	... 22 ... grades 1, 2 & 3 ... 1994-95	
	... 21 ... grades 1, 2 & 3 ... 1995-96	
	... 20 ... grades 1, 2 & 3 ... 1996-97 and each year thereafter.	
160 to 299.99 ADA	20	8.4
110 to 159.99 ADA	19	6.8
71.1 to 109.99 ADA	16	4.7
51.7 to 71.0 ADA	15	4.0
33.6 to 51.6 ADA	13	2.8
16.6 to 33.5 ADA	12	1.4
1.0 to 16.5 ADA	n/a	1.0

COMPUTATION OF SECONDARY SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
750 or more	18.5	47
400 — 749.99 ADA	16	28
300 — 399.99 ADA	14.5	22
200 — 299.99 ADA	13.5	17
100 — 199.99 ADA	12	9
99.99 or fewer	Units allowed as follows:	
Grades 7—12		8
Grades 9—12		6
Grades 7—9		1 per 14 ADA
Grades 7— 8		1 per 16 ADA

COMPUTATION OF EXCEPTIONAL EDUCATION SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
14 or more	14.5	1 or more as computed
12 — 13.99	—	1
8 — 11.99	—	.75
4 — 7.99	—	.5
1 — 3.99	—	.25

COMPUTATION OF ALTERNATIVE SCHOOL SECONDARY SUPPORT UNITS

Pupils in Attendance	Attendance Divisor	Minimum Units Allowed
12 or more	12	1 or more as computed

In applying these tables to any given separate attendance unit, no school district shall receive less total money than it would receive if it had a lesser average daily attendance in such separate attendance unit. In applying the kindergarten table to a kindergarten program of less days than a full school year, the support unit allowance shall be in ratio to the number of days of a full school year. The tables for exceptional education and alternative school secondary support units shall be applicable only for programs approved by the state department of education following rules established by the state board of education. Moneys generated from computation of support units for alternative schools shall be utilized for alternative school programs. School district administrative and facility costs may be included as part of the alternative school expenditures.

(5) State Distribution Factor per Support Unit. Divide educational support program distribution funds, after subtracting the amounts necessary to pay the obligations specified in subsection (2) of this section, by the total state support units to secure the state distribution factor per support unit.

(6) District Support Units. The number of support units for each school district in the state shall be determined as follows:

(a)(i) Divide the actual average daily attendance, excluding students approved for inclusion in the exceptional child educational program, for the administrative schools and each of the separate schools and attendance units by the appropriate divisor from the tables of support units in this section, then add the quotients to obtain the district's support units allowance for regular students, kindergarten through grade 12 including alternative school secondary students. Calculations in application of this subsection shall be carried out to the nearest hundredth.

(ii) Divide the combined totals of the average daily attendance of all preschool, kindergarten, elementary, secondary, juvenile detention center students and students with disabilities approved for inclusion in the exceptional child program of the district by the appropriate divisor from the table for computation of exceptional education support units to

obtain the number of support units allowed for the district's approved exceptional child program. Calculations for this subsection shall be carried out to the nearest hundredth when more than one (1) unit is allowed.

(iii) The total number of support units of the district shall be the sum of the total support units for regular students, subsection (6)(a)(i) of this section, and the support units allowance for the approved exceptional child program, subsection (6)(a)(ii) of this section.

(b) Total District Allowance Educational Program. Multiply the district's total number of support units, carried out to the nearest hundredth, by the state distribution factor per support unit and to this product add the approved amount of programs of the district provided in subsection (2) of this section to secure the district's total allowance for the educational support program.

(c) District Share. The district's share of state apportionment is the amount of the total district allowance, subsection (6)(b) of this section.

(d) Adjustment of District Share. The contract salary of every noncertificated teacher shall be subtracted from the district's share as calculated from the provisions of subsection (6)(c) of this section.

(7) Property Tax Computation Ratio. In order to receive state funds pursuant to this section a charter district shall utilize a school maintenance and operation property tax computation ratio for the purpose of calculating its maintenance and operation levy, that is no greater than that which it utilized in tax year 1994, less four-tenths of one percent (.4%). As used herein, the term "property tax computation ratio" shall mean a ratio determined by dividing the district's certified property tax maintenance and operation budget by the actual or adjusted market value for assessment purposes as such values existed on December 31, 1993. Such maintenance and operation levy shall be based on the property tax computation ratio multiplied by the actual or adjusted market value for assessment purposes as such values existed on December 31 of the prior calendar year.

History.

I.C., § 33-1002, as added by 1995, ch. 306, § 4, p. 1057; am. 1995, ch. 306, § 5, p. 1057; am. 1996, ch. 146, § 1, p. 478; am. 1996, ch. 322, § 23, p. 1029; am. 1996, ch. 408, § 1, p. 1350; am. 1998, ch. 1, § 103, p. 3; am. 1999, ch. 329, § 30, p. 852; am. 2000, ch. 266, § 2, p. 743; am. 2003, ch. 299, § 4, p. 814; am. 2003, ch. 372, § 9, p. 986; am. 2005, ch. 257, § 8, p. 789; am. 2006, ch. 418, § 7, p. 1291; am. 2006 (1st E.S.), ch. 1, § 8; am. 2007, ch. 79, § 5, p. 209; am. 2007, ch. 353, § 11, p. 1045; am. 2008, ch. 27, § 8, p. 46; am. 2010, ch. 235, § 13, p. 542; am. 2013, ch. 98, § 1, p. 236; am. 2013, ch. 154, § 1, p. 360; am. 2013, ch. 294, § 1, p. 776; am. 2013, ch. 338, § 2, p. 877; am. 2013, ch. 342, § 1, p. 900.

STATUTORY NOTES

Amendments.

This section was amended by five 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 98, added paragraph (2)[(p)] and redesignated the subsequent paragraphs in subsection (2) accordingly.

The 2013 amendment, by ch. 154, inserted paragraphs designated as (2)[(m)], (2)[(n)], and (2)[(o)] and redesignated the subsequent paragraphs in subsection (2) accordingly.

The 2013 amendment, by ch. 294, substituted "nearest hundredth" for "nearest tenth" three times in subsection (6).

The 2013 amendment, by ch. 338, § 2, deleted two paragraphs from subsection (2), which read: "For differential pay as provided

in section 33-1004J, Idaho Code;" and "For technology pilot projects as provided in section 33-4811, Idaho Code" and redesignated the subsequent paragraphs in subsection (2) accordingly.

The 2013 amendment, by ch. 342, added paragraph (2)(*l*) and redesignated the subsequent paragraphs in subsection (2) accordingly.

Compiler's Notes.

For this section as effective April 11, 2013 through June 30, 2013 and effective until July 1, 2014, see the preceding sections, also numbered § 33-1002.

Effective Dates.

Section 2 of S.L. 2013, ch. 294 declared an emergency. Approved April 9, 2013.

Section 9 of S.L. 2013, ch. 338 provided that sections 2 [this section], 4, and 7 of the act should take effect July 1, 2014.

33-1002A. Fractional average daily attendance. [Null and void.]

Null and void, pursuant to rejection of Proposition 3 on November 6, 2012.

History.

I.C., § 33-1002A, as added by 2011, ch. 247, § 6, p. 669; am. 2011, ch. 300, § 1, p. 857; am. 2012, ch. 16, § 1, p. 34.

STATUTORY NOTES

Compiler's Notes.

This section was enacted by S.L. 2011, ch. 247, effective April 8, 2011. Session Laws 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section, and the amendments by S.L. 2011, ch. 300 and S.L. 2012, ch. 16, became null and void.

33-1002B. Pupil tuition-equivalency allowances. — 1. Districts which educate pupils placed by Idaho court order in licensed homes, agencies, institutions or juvenile detention facilities shall be eligible for an allowance equivalent to forty-two percent (42%) of the previous year's gross per pupil cost calculated on a daily basis. This district allowance shall be in addition to support unit funding and included in district apportionment payments, subject to approval of district applications by the state superintendent of public instruction.

2. Districts which educate pupils placed by Idaho court order in a juvenile detention facility with a summer school program shall be eligible for an allowance equivalent to one-half (1/2) of forty-two percent (42%) of the previous year's gross per pupil cost calculated on a daily basis. This district allowance shall be in addition to support unit funding and included in district apportionment payments, subject to approval of district applications by the state superintendent of public instruction.

3. Districts which educate school age special education students who, due to the nature and severity of their disabilities, are residing in licensed public or private residential facilities or homes, and whose parents are not patrons of the district, shall be eligible for an allowance equivalent to forty-two percent (42%) of the previous year's gross per pupil cost per child plus the excess cost rate that is annually determined by the state superintendent of public instruction. This district allowance shall be in addition to exceptional education support unit funding and included in district apportionment payments, subject to approval of district applications by the state superintendent of public instruction.

4. For school age special education students from outside the state of

Idaho who, due to the nature and severity of their disabilities, are residing in licensed public or private residential facilities within the state of Idaho, the local school district shall provide education services to such students if requested by the licensed public or private residential facility, provided that the local school district has been given the opportunity to provide input on any federally required education plans for any such students. A local school district providing education services for such students shall sign a contract with any such licensed public or private residential facilities, which contract shall delineate the education services to be provided by the local school district and the amount to be paid by the licensed public or private residential facility. The amount paid shall be equal to the local school district's full cost of providing the education services delineated by the contract, as determined by the local school district. Such students shall be excluded from all average daily attendance and other reports provided to the state that would result in the distribution of state funding to the local school district.

5. For school age nonspecial education students from outside the state of Idaho who are residing in licensed public or private residential facilities within the state of Idaho, the local school district may provide education services to such students if requested by the licensed public or private residential facility. A local school district providing education services for such students shall sign a contract with any such licensed public or private residential facilities, which contract shall delineate the education services to be provided by the local school district and the amount to be paid by the licensed public or private residential facility. The amount paid shall be equal to the local school district's full cost of providing the education services delineated by the contract, as determined by the local school district. Such students shall be excluded from all average daily attendance and other reports provided to the state that would result in the distribution of state funding to the local school district.

History.

I.C., § 33-1002B, as added by 1994, ch. 428, § 3, p. 1368; am. 1994, ch. 440, § 2, p. 1409; am. 1996, ch. 133, § 1, p. 456; am. 2001, ch. 93, § 2, p. 232; am. 2001, ch. 252, § 1, p. 917; am. 2008, ch. 401, § 1, p. 1104; am. 2013, ch. 169, § 1, p. 389.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 169, added subsections 4 and 5.

33-1002C. Summer school program support units — Alternative secondary school — Juvenile detention facility. — (1) Alternative secondary summer school programs of not less than two hundred twenty-five (225) hours of instruction, which shall be included in the educational support units calculated as provided in section 33-1002, Idaho Code, may be established as approved by the state board of education. The average daily attendance divided by forty (40) shall determine the number of allowable support units which shall be included in the alternative school secondary

support units calculated for the school district for the succeeding school term.

(2) For any alternative secondary school designated pursuant to section 46-805, Idaho Code, full-term average daily attendance shall be used to calculate support units for each cohort of students that meets the minimum instructional hours requirement provided for in section 33-512, Idaho Code. The support units so calculated shall be used for all state funding formulas in which support units are used.

(3) Districts which educate pupils placed by court order in a juvenile detention facility may establish a summer school program which shall be included in the educational support units calculated as provided in section 33-1002, Idaho Code. The average daily attendance divided by forty (40) shall determine the number of allowable support units which shall be included in the exceptional education school support units calculated for the school district for the succeeding school term.

(4) Average daily attendance and the support units so generated by this section shall not be included in or subject to the provisions of section 33-1003, Idaho Code, and shall be included as an addition to any other support units generated pursuant to Idaho Code.

History.

I.C., § 33-1002C, as added by 1990, ch. 204, § 1, p. 457; am. 1992, ch. 42, § 1, p. 142; am. 1996, ch. 146, § 2, p. 478; am. 2001, ch. 252, § 2, p. 917; am. 2002, ch. 154, § 1, p. 449; am. 2005, ch. 255, § 5, p. 782; am. 2013, ch. 268, § 1, p. 696.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 268, added present subsection (2) and renumbered the subsequent subsections accordingly.

33-1003. Special application of educational support program. — (1) Decrease in Average Daily Attendance. — For any school district that has a decrease in total average daily attendance of three percent (3%) or more of its average daily attendance in the current school year from the total average daily attendance used for determining the allowance in the educational support program for the prior school year, the allowance of funds from the educational support program may be based on the average daily attendance of the prior school year, less three percent (3%). When this provision is applied, the decrease in average daily attendance shall be proportionately distributed among the various categories of support units that are appropriate for the district. After applying the provisions of this subsection, the state department of education shall calculate the percentage of additional statewide support units to total statewide support units and shall then reduce each school district's support units by this uniform percentage. The provisions of this subsection shall not apply to public charter schools.

(2) Application of Support Program to Separate Schools/Attendance Units in District.

(a) Separate Elementary School. — Any separate elementary school shall

be allowed to participate in the educational support program as though the school were the only elementary school operated by the district.

(b) Hardship Elementary School. — Upon application of the board of trustees of a school district, the state board of education is empowered to determine that a given elementary school or elementary schools within the school district, not otherwise qualifying, are entitled to be counted as a separate elementary school as defined in section 33-1001, Idaho Code, when, in the discretion of the state board of education, special conditions exist warranting the retention of the school as a separate attendance unit and the retention results in a substantial increase in cost per pupil in average daily attendance above the average cost per pupil in average daily attendance of the remainder of the district's elementary grade school pupils. An elementary school operating as a previously approved hardship elementary school shall continue to be considered as a separate attendance unit, unless the hardship status of the elementary school is rescinded by the state board of education.

(c) Separate Secondary School. — Any separate secondary school shall be allowed to participate in the educational support program as though the school were the only secondary school operated by the district.

(d) Elementary/Secondary School Attendance Units. — Elementary grades in an elementary/secondary school will be funded as a separate attendance unit if all elementary grades served are located more than ten (10) miles distance by an all-weather road from both the nearest like elementary grades within the same school district and from the location of the office of the superintendent of schools of such district, or from the office of the chief administrative officer of such district if the district employs no superintendent of schools. Secondary grades in an elementary/secondary school will be funded as a separate attendance unit if all secondary grades served are located more than fifteen (15) miles by an all-weather road from the nearest like secondary grades operated by the district.

(e) Hardship Secondary School. — Any district that operated two (2) secondary schools separated by less than fifteen (15) miles, but which district was created through consolidation subsequent to legislative action pursuant to chapter 111, laws of 1947, and which school buildings were constructed prior to 1935, shall be entitled to count the schools as separate attendance units.

(f) Minimum Pupils Required. — Any elementary school having less than ten (10) pupils in average daily attendance shall not be allowed to participate in the state or county support program unless the school has been approved for operation by the state board of education.

(3) Remote Schools. — The board of trustees of any Idaho school district that operates and maintains a school that is remote and isolated from the other schools of the state because of geographical or topographical conditions may petition the state board of education to recognize and approve the school as a remote and necessary school. The petition shall be in form and content approved by the state board of education and shall provide such information as the state board of education may require. Petitions for the recognition of a school as a remote and necessary school shall be filed

annually at least ninety (90) days prior to the date of the annual meeting of the board of trustees as established in section 33-510, Idaho Code.

Within forty-five (45) days after the receipt of a petition for the recognition of a remote and necessary school, the state board of education shall either approve or disapprove the petition and notify the board of trustees of its decision. Schools that the state board of education approves as being necessary and remote shall be allowed adequate funding within the support program for an acceptable educational program for the students of the school. In the case of a remote and necessary secondary school, grades 7-12, the educational program shall be deemed acceptable when, in the opinion of the state board of education, the accreditation standard relating to staff size, established in accordance with the provisions of section 33-119, Idaho Code, has been met. The final determination of an acceptable program and adequate funding in the case of a remote and necessary elementary school shall be made by the state board of education.

(4) Support Program When District Boundaries are Changed.

(a) In new districts formed by the division of a district, the support program computed for the district, divided in its last year of operation, shall be apportioned to the new districts created by the division in the proportion that the average daily attendance of pupils, elementary and secondary combined, residing in the area of each new district so created, is to the average daily attendance of all pupils, elementary and secondary combined, in the district divided in its last year of operation before the division.

(b) When boundaries of districts are changed by excision or annexation of territory, the support program of any district from which territory is excised for the last year of operation before such excision shall be divided, and apportioned among the districts involved, as prescribed in paragraph (a) of this subsection.

(c) In new districts formed by consolidation of former districts after January 1, 2007, the support program allowance, for a seven (7) year period following the formation of the new district, shall not be less than the combined support program allowances of the component districts in the last year of operation before consolidation. After the expiration of this period, the state department of education shall annually calculate the number of support units that would have been generated had the previous school districts not consolidated. All applicable state funding to the consolidated district shall then be provided based on a support unit number that is halfway between this figure and the actual support units, provided that it cannot be less than the actual support units.

History.

I.C., § 33-1003, as added by 2013, ch. 184, § 2, p. 441.

STATUTORY NOTES

Prior Laws.

Former § 33-1003, Special applications of educational support program, which comprised 1963, ch. 322, § 3, p. 919; am. 1965, ch. 232, § 3, p. 553; am. I.C., § 35-1003A, as added by 1973, ch. 86, § 1, p. 136; am. 1978,

ch. 66, § 1, p. 133; am. I.C., § 33-1003B, as added by 1979, ch. 32, § 1, p. 47; am. 1979, ch. 254, § 7, p. 661; am. 1980, ch. 179, § 4, p. 382; am. 1980, ch. 180, § 1, p. 399; am. 1982, ch. 185, § 1, p. 488; am. 1983, ch. 53, § 1, p. 125; am. 1984, ch. 97, § 1, p. 223; am. 1985, ch. 236, § 1, p. 560; am. 1987, ch. 123, § 1, p. 251; am. 1989, ch. 296, § 3, p. 724; am. 1996, ch. 208, § 7, p. 658; am. 1996, ch. 322, § 25, p. 1029; am. 1997, ch. 117, § 5, p. 298; am. 2000, ch. 266, § 3, p. 743; am. 2006 (1st E.S.), ch. 1, § 10; am. 2007, ch. 79, § 6, p. 209, was repealed by S.L. 2013, ch. 184, § 1, effective March 29, 2013.

Compiler's Notes.

Former § 33-1003 was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendments by S.L. 2011, ch. 295, S.L. 2011, ch. 335, and S.L. 2012, ch. 340, became null and void, and this section was returned to its pre-2011 provisions, prior to its repeal in 2013.

Effective Dates.

Section 3 of S.L. 2013, declared an emergency. Approved March 29, 2013.

33-1004. Staff allowance. [Effective April 11, 2013 through June 30, 2013.] — For each school district, a staff allowance shall be determined as follows:

(1) Using the daily attendance reports that have been submitted for computing the February 15 apportionment of state funds as provided in section 33-1009, Idaho Code, determine the total support units for the district in the manner provided in section 33-1002(6)(a), Idaho Code;

(2) Determine the instructional staff allowance by multiplying the support units by 1.1. A district must demonstrate that it actually employs the number of certificated instructional staff allowed, except as provided in subsection (5)(f), (g) and (h) of this section. If the district does not employ the number allowed, the staff allowance shall be reduced to the actual number employed, except as provided in subsection (5)(f), (g) and (h) of this section;

(3) Determine the administrative staff allowance by multiplying the support units by .075;

(4) Determine the classified staff allowance by multiplying the support units by .375;

(5) Additional conditions governing staff allowance:

(a) In determining the number of staff in subsections (2), (3) and (4) of this section, a district may contract separately for services to be rendered by nondistrict employees and such employees may be counted in the staff allowance. A "nondistrict employee" means a person for whom the school district does not pay the employer's obligations for employee benefits. When a district contracts for the services of a nondistrict employee, only the salary portion of the contract shall be allowable for computations.

(b) If there are circumstances preventing eligible use of staff allowance to which a district is entitled as provided in subsections (2) and (3) of this section, an appeal may be filed with the state department of education outlining the reasons and proposed alternative use of these funds, and a waiver may be granted.

(c) For any district with less than forty (40) support units:

(i) The instructional staff allowance shall be calculated applying the actual number of support units. If the actual instructional staff employed in the school year is greater than the instructional staff allow-

ance, then the instructional staff allowance shall be increased by one-half (1/2) staff allowance; and

(ii) The administrative staff allowance shall be calculated applying the actual number of support units. If the actual administrative staff employed in the school year is greater than the administrative staff allowance, then the administrative staff allowance shall be increased by one-half (1/2) staff allowance.

(iii) Additionally, for any district with less than twenty (20) support units, the instructional staff allowance shall be calculated applying the actual number of support units. If the number of instructional staff employed in the school year is greater than the instructional staff allowance, the staff allowance shall be increased as provided in subparagraphs (i) and (ii) of this paragraph, and by an additional one-half (1/2) instructional staff allowance.

(d) For any school district with one (1) or more separate secondary schools serving grades nine (9) through twelve (12), the instructional staff allowance shall be increased by two (2) additional instructional staff allowances for each such separate secondary school.

(e) Only instructional, administrative and classified personnel compensated by the school district from the general maintenance and operation fund of the district shall be included in the calculation of staff allowance or in any other calculations based upon staff, including determination of the experience and education multiplier, the reporting requirements, or the district's salary-based apportionment calculation. No food service staff or transportation staff shall be included in the staff allowance.

(f) A district may utilize up to fifteen percent (15%) of the moneys associated with positions funded pursuant to subsection (2) of this section to pay another school district or public charter school for instructional services or to defray the cost of providing virtual education coursework, including virtual dual credit coursework, without a reduction in the number of funded positions being imposed.

(g) For the period July 1, 2009, through June 30, 2011, only, a district may shift up to five percent (5%) of the positions funded pursuant to subsection (2) of this section to federal funds, without a reduction in the number of funded positions being imposed.

(h) A district may employ nine and one-half percent (9.5%) fewer positions than funded pursuant to subsection (2) of this section, without a reduction in the number of funded positions being imposed.

(6) In the event that the staff allowance in any category is insufficient to meet accreditation standards, a district may appeal to the state board of education, demonstrating the insufficiency, and the state board may grant a waiver authorizing sufficient additional staff to be included within the staff allowance to meet accreditation standards. Such a waiver shall be limited to one (1) year, but may be renewed upon showing of continuing justification.

History.

I.C., § 33-1004, as added by 1994, ch. 428, § 5, p. 1368; am. 1995, ch. 52, § 1, p. 119; am. 1995, ch. 271, § 1, p. 871; am. 1998, ch. 166, § 1, p. 561; am. 2003, ch. 375, § 5, p. 1002; am. 2006, ch. 412, § 1, p. 1249; am. 2006 (1st

E.S.), ch. 1, § 11; am. 2009, ch. 340, § 1, p. 983; am. 2010, ch. 326, § 3, p. 863; am. 2013, ch. 340, § 2, p. 890.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 340, in subsection (2), added the exception in the last two sentences; and added subsections (5)(f) and (5)(g).

The 2010 amendment, by ch. 326, substituted "five percent (5%)" for "two and sixty-three hundredths percent (2.63%)" in paragraph (5)(g).

The 2013 amendment, by ch. 340, in subsection (2), substituted "(g) and (h)" for "and (g)" two times; in paragraph (5)(f), substituted "fifteen percent (15%)" for "five percent (5%)" near the beginning and inserted "pay another school district or public charter school for instructional services or to"; and added subsection (h).

Compiler's Notes.

For this section as effective July 1, 2013 through June 30, 2014, and effective July 1, 2014, see the following sections, also numbered § 33-1004.

This section was amended by S.L. 2011, ch. 247, effective April 8, 2011. The amendment by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2011, ch. 300, became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

Section 4 of S.L. 2009, ch. 340 purported to repeal this section and section 5 of that act enacted a new § 33-1004, effective July 1, 2011, but sections 4 and 5 of S.L. 2009, ch. 340 were repealed by sections 1 and 2 of S.L. 2009, ch. 342.

Section 8 of S.L. 2013, ch. 340 provided "The provisions of this act shall be null, void and of no force and effect after June 30, 2013."

Effective Dates.

Section 6 of S.L. 2009, ch. 340, as amended by S.L. 2009, ch. 342, § 3, provides that sections 1 and 2 of the act should take effect on and after July 1, 2009.

Section 6 of S.L. 2010, ch. 326 provided that sections 3, 4, and 5 of that act should take effect on and after July 1, 2010.

Section 8 of S.L. 2013, ch. 340 declared an emergency. Approved April 11, 2013.

33-1004. Staff allowance. [Effective July 1, 2013 through June 30, 2014.] — For each school district, a staff allowance shall be determined as follows:

(1) Using the daily attendance reports that have been submitted for computing the February 15 apportionment of state funds as provided in section 33-1009, Idaho Code, determine the total support units for the district in the manner provided in section 33-1002(6)(a), Idaho Code;

(2) Determine the instructional staff allowance by multiplying the support units by 1.1. A district must demonstrate that it actually employs the number of certificated instructional staff allowed, except as provided in subsection (5)(f), (g) and (h) of this section. If the district does not employ the number allowed, the staff allowance shall be reduced to the actual number employed, except as provided in subsection (5)(f), (g) and (h) of this section;

(3) Determine the administrative staff allowance by multiplying the support units by .075;

(4) Determine the classified staff allowance by multiplying the support units by .375;

(5) Additional conditions governing staff allowance:

(a) In determining the number of staff in subsections (2), (3) and (4) of this section, a district may contract separately for services to be rendered by nondistrict employees and such employees may be counted in the staff allowance. A "nondistrict employee" means a person for whom the school district does not pay the employer's obligations for employee benefits.

When a district contracts for the services of a nondistrict employee, only the salary portion of the contract shall be allowable for computations.

(b) If there are circumstances preventing eligible use of staff allowance to which a district is entitled as provided in subsections (2) and (3) of this section, an appeal may be filed with the state department of education outlining the reasons and proposed alternative use of these funds, and a waiver may be granted.

(c) For any district with less than forty (40) support units:

(i) The instructional staff allowance shall be calculated applying the actual number of support units. If the actual instructional staff employed in the school year is greater than the instructional staff allowance, then the instructional staff allowance shall be increased by one-half (1/2) staff allowance; and

(ii) The administrative staff allowance shall be calculated applying the actual number of support units. If the actual administrative staff employed in the school year is greater than the administrative staff allowance, then the administrative staff allowance shall be increased by one-half (1/2) staff allowance.

(iii) Additionally, for any district with less than twenty (20) support units, the instructional staff allowance shall be calculated applying the actual number of support units. If the number of instructional staff employed in the school year is greater than the instructional staff allowance, the staff allowance shall be increased as provided in subparagraphs (i) and (ii) of this paragraph, and by an additional one-half (1/2) instructional staff allowance.

(d) For any school district with one (1) or more separate secondary schools serving grades nine (9) through twelve (12), the instructional staff allowance shall be increased by two (2) additional instructional staff allowances for each such separate secondary school.

(e) Only instructional, administrative and classified personnel compensated by the school district from the general maintenance and operation fund of the district shall be included in the calculation of staff allowance or in any other calculations based upon staff, including determination of the experience and education multiplier, the reporting requirements, or the district's salary-based apportionment calculation. No food service staff or transportation staff shall be included in the staff allowance.

(f) A district may utilize up to fifteen percent (15%) of the moneys associated with positions funded pursuant to subsection (2) of this section to pay another school district or public charter school for instructional services or to defray the cost of providing virtual education coursework, including virtual dual credit coursework, without a reduction in the number of funded positions being imposed.

(g) For the period July 1, 2009, through June 30, 2011, only, a district may shift up to five percent (5%) of the positions funded pursuant to subsection (2) of this section to federal funds, without a reduction in the number of funded positions being imposed.

(h) A district may employ nine and one-half percent (9.5%) fewer positions than funded pursuant to subsection (2) of this section, without a reduction in the number of funded positions being imposed.

(6) In the event that the staff allowance in any category is insufficient to meet accreditation standards, a district may appeal to the state board of education, demonstrating the insufficiency, and the state board may grant a waiver authorizing sufficient additional staff to be included within the staff allowance to meet accreditation standards. Such a waiver shall be limited to one (1) year, but may be renewed upon showing of continuing justification.

(7) A district may utilize a portion of the instructional staff allowance provided for in this section for kindergarten teachers to visit the parents or guardians of students during the first week of the kindergarten school year. Such visits may take place at school, at the student's home or at another location agreed to by the teacher and parents or guardians. The purpose of such visits is to help strengthen the working relationship between the teacher, the parents or guardians, and the student. The visits should be used as an opportunity to help establish the teacher's expectations of the student. The visit should also provide an opportunity for the parents or guardians to explain their expectations. The amount of moneys to be expended for such visits by the district may not exceed the amount equal to one (1) week of instructional staff allowance computed for kindergarten instructors in the district.

History.

I.C., § 33-1004, as added by 1994, ch. 428, § 5, p. 1368; am. 1995, ch. 52, § 1, p. 119; am. 1995, ch. 271, § 1, p. 871; am. 1998, ch. 166, § 1, p. 561; am. 2003, ch. 375, § 5, p. 1002; am. 2006, ch. 412, § 1, p. 1249; am. 2006 (1st E.S.), ch. 1, § 11; am. 2009, ch. 340, § 1, p. 983; am. 2010, ch. 326, § 3, p. 863; am. 2013, ch. 148, § 1, p. 344; am. 2013, ch. 349, § 1, p. 948.

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 349, § 2, at which time a new § 33-1004 is enacted. For this section as effective until June 30, 2013, see the preceding section and for this section effective July 1, 2014, see the following section, both numbered § 33-1004.

Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 148, added subsection (7).

The 2013 amendment, by ch. 349, substituted "(g) and (h)" for "and (g)" two times in subsection (2); in paragraph (5)(f), substituted "fifteen percent (15%)" for "five percent (5%)" and inserted "pay another school district or public charter school for instructional services or to"; and added paragraph (5)(h).

Effective Dates.

Section 4 of S.L. 2013, ch. 349 provided: "The provisions of Section 1 [this section] of this act shall be in full force and effect on and after July 1, 2013. The provisions of sections 2 and 3 of this act shall be in full force and effect on and after July 1, 2014."

33-1004. Staff allowance. [Effective July 1, 2014.] — For each school district, a staff allowance shall be determined as follows:

(1) Using the daily attendance reports that have been submitted for computing the February 15 apportionment of state funds as provided in section 33-1009, Idaho Code, determine the total support units for the district in the manner provided in section 33-1002(6)(a), Idaho Code;

(2) Determine the instructional staff allowance by multiplying the support units by 1.1. A district must demonstrate that it actually employs the number of certificated instructional staff allowed, except as provided in subsection (5)(f) and (g) of this section. If the district does not employ the

number allowed, the staff allowance shall be reduced to the actual number employed, except as provided in subsection (5)(f) and (g) of this section;

(3) Determine the administrative staff allowance by multiplying the support units by .075;

(4) Determine the classified staff allowance by multiplying the support units by .375;

(5) Additional conditions governing staff allowance:

(a) In determining the number of staff in subsections (2), (3) and (4) of this section, a district may contract separately for services to be rendered by nondistrict employees and such employees may be counted in the staff allowance. A "nondistrict employee" means a person for whom the school district does not pay the employer's obligations for employee benefits. When a district contracts for the services of a nondistrict employee, only the salary portion of the contract shall be allowable for computations.

(b) If there are circumstances preventing eligible use of staff allowance to which a district is entitled as provided in subsections (2) and (3) of this section, an appeal may be filed with the state department of education outlining the reasons and proposed alternative use of these funds, and a waiver may be granted.

(c) For any district with less than forty (40) support units:

(i) The instructional staff allowance shall be calculated applying the actual number of support units. If the actual instructional staff employed in the school year is greater than the instructional staff allowance, then the instructional staff allowance shall be increased by one-half (1/2) staff allowance; and

(ii) The administrative staff allowance shall be calculated applying the actual number of support units. If the actual administrative staff employed in the school year is greater than the administrative staff allowance, then the administrative staff allowance shall be increased by one-half (1/2) staff allowance.

(iii) Additionally, for any district with less than twenty (20) support units, the instructional staff allowance shall be calculated applying the actual number of support units. If the number of instructional staff employed in the school year is greater than the instructional staff allowance, the staff allowance shall be increased as provided in subparagraphs (i) and (ii) of this paragraph, and by an additional one-half (1/2) instructional staff allowance.

(d) For any school district with one (1) or more separate secondary schools serving grades nine (9) through twelve (12), the instructional staff allowance shall be increased by two (2) additional instructional staff allowances for each such separate secondary school.

(e) Only instructional, administrative and classified personnel compensated by the school district from the general maintenance and operation fund of the district shall be included in the calculation of staff allowance or in any other calculations based upon staff, including determination of the experience and education multiplier, the reporting requirements, or the district's salary-based apportionment calculation. No food service staff or transportation staff shall be included in the staff allowance.

(f) A district may utilize up to five percent (5%) of the moneys associated with positions funded pursuant to subsection (2) of this section to defray the cost of providing virtual education coursework, including virtual dual credit coursework, without a reduction in the number of funded positions being imposed.

(g) For the period July 1, 2009, through June 30, 2011, only, a district may shift up to five percent (5%) of the positions funded pursuant to subsection (2) of this section to federal funds, without a reduction in the number of funded positions being imposed.

(6) In the event that the staff allowance in any category is insufficient to meet accreditation standards, a district may appeal to the state board of education, demonstrating the insufficiency, and the state board may grant a waiver authorizing sufficient additional staff to be included within the staff allowance to meet accreditation standards. Such a waiver shall be limited to one (1) year, but may be renewed upon showing of continuing justification.

History.
I.C., § 33-1004, as added by 2013, ch. 349, § 3, p. 948.

STATUTORY NOTES

Prior Laws.
Former § 33-1004, which comprised 1994, ch. 428, § 5, p. 1368; am. 1995, ch. 52, § 1, p. 119; am. 1995, ch. 271, § 1, p. 871; am. 1998, ch. 166, § 1, p. 561; am. 2003, ch. 375, § 5, p. 1002; am. 2006, ch. 412, § 1, p. 1249; am. 2006 (1st E.S.), ch. 1, § 11; am. 2009, ch. 340, § 1, p. 983; am. 2010, ch. 326, § 3, p. 863, was repealed by S.L. 2013, ch. 349, § 2, effective July 1, 2014.

Compiler's Notes.
For this section as effective through June 30, 2013, and effective July 1, 2013 through June 30, 2014, see the preceding sections, also numbered § 33-1004.

Effective Dates.
Section 4 of S.L. 2013, ch. 349 provided: "The provisions of Section 1 of this act shall be in full force and effect on and after July 1, 2013. The provisions of sections 2 and 3 [this section] of this act shall be in full force and effect on and after July 1, 2014."

33-1004A. Experience and education multiplier. [Effective April 11, 2013 through June 30, 2013.] — Each instructional and administrative staff position shall be assigned an appropriate multiplier based upon the following table:

EXPERIENCE AND EDUCATION

Years	BA	BA + 12	BA + 24	MA BA + 36	MA + 12 BA + 48	MA + 24 BA + 60	MA + 36 ES/DR
0	1.00000	1.03750	1.07640	1.11680	1.15870	1.20220	1.24730
1	1.03750	1.07640	1.11680	1.15870	1.20220	1.24730	1.29410
2	1.07640	1.11680	1.15870	1.20220	1.24730	1.29410	1.34260
3	1.11680	1.15870	1.20220	1.24730	1.29410	1.34260	1.39290
4	1.15870	1.20220	1.24730	1.29410	1.34260	1.39290	1.44510
5	1.20220	1.24730	1.29410	1.34260	1.39290	1.44510	1.49930
6	1.24730	1.29410	1.34260	1.39290	1.44510	1.49930	1.55550
7	1.29410	1.34260	1.39290	1.44510	1.49930	1.55550	1.61380
8	1.34260	1.39290	1.44510	1.49930	1.55550	1.61380	1.67430
9	1.39290	1.44510	1.49930	1.55550	1.61380	1.67430	1.73710
10	1.39290	1.49930	1.55550	1.61380	1.67430	1.73710	1.80220
11	1.39290	1.49930	1.55550	1.61380	1.73710	1.80220	1.86980

EXPERIENCE AND EDUCATION

Years	BA	BA + 12	BA + 24	MA BA + 36	MA + 12 BA + 48	MA + 24 BA + 60	MA + 36 ES/DR
12	1.39290	1.49930	1.55550	1.61380	1.73710	1.86980	1.93990
13 or more	1.39290	1.49930	1.55550	1.61380	1.73710	1.86980	2.01260

In determining the experience factor, the actual years of teaching or administrative service in a public school, in an accredited private or parochial school, or beginning in the 2005-06 school year and thereafter in an accredited college or university shall be credited, minus two (2); provided however, that the experience factor cannot be less than zero (0).

In determining the education factor, only credits earned after initial certification, based upon a transcript on file with the teacher certification office of the state department of education, earned at an institution of higher education accredited by the state board of education or a regional accrediting association, shall be allowed. Instructional staff whose initial certificate is an occupational specialist certificate shall be treated as BA degree prepared instructional staff. Credits earned by such occupational specialist instructional staff after initial certification shall be credited toward the education factor.

In determining the statewide average multiplier for instructional staff, no multiplier in excess of 1.59092 shall be used. If the actual statewide average multiplier for instructional staff, as determined by this section, exceeds 1.59092, then each school district's instructional staff multiplier shall be multiplied by the result of 1.59092 divided by the actual statewide average multiplier for instructional staff.

In determining the statewide average multiplier for administrative staff, no multiplier in excess of 1.86643 shall be used. If the actual statewide average multiplier for administrative staff, as determined by this section, exceeds 1.86643, then each school district's administrative staff multiplier shall be multiplied by the result of 1.86643 divided by the actual statewide average multiplier for administrative staff.

History.

I.C., § 33-1004A, as added by 1994, ch. 428, § 6, p. 1368; am. 2000, ch. 67, § 1, p. 151; am. 2003, ch. 371, § 4, p. 983; am. 2003, ch. 375, § 4, p. 1002; am. 2004, ch. 341, § 4, p. 1015; am. 2006, ch. 260, § 1, p. 799; am. 2008, ch. 158, § 1, p. 455; am. 2009, ch. 285, § 1, p. 858; am. 2010, ch. 234, § 32, p. 531; am. 2013, ch. 340, § 3, p. 890.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 285, in the paragraph following the table, added "minus one (1); provided however, that the experience factor cannot be less than zero (0)."

The 2010 amendment, by ch. 234, in the first paragraph following the table, substituted "minus two (2)" for "minus one (1)"; and added the last sentence in the second paragraph following the table.

The 2013 amendment, by ch. 340, deleted the former last sentence of the third paragraph, which read, "For the time period July 1, 2010, through June 30, 2011, instructional and administrative staff shall not advance on the education portion of the multiplier table."

Legislative Intent.

Section 15 of S.L. 2010, ch. 234 provided "It is legislative intent that public school employee benefits paid by the state, pursuant to Section 33-1004F, Idaho Code, be paid for all eligible employees that a school district or charter school actually employs with its sala-

ry-based apportionment allotment, regardless of whether such employees are categorized as administrative, instructional or classified staff."

Section 25 of S.L. 2010, ch. 234 provided "It is legislative intent that school districts continuing to use discretionary funds for safe and drug-free purposes may include the following:

"(1) Prevention programs, student assistance programs that address early identification and referral, and aftercare.

"(2) An advisory board to assist each district in making decisions relating to their program."

Compiler's Notes.

For this section as effective July 1, 2013, see the following section, also numbered § 33-1004A.

This section was amended by S.L. 2011, ch. 247, effective April 8, 2011. The amendment by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2011, ch. 300, became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

Section 2 of S.L. 2009, ch. 285 provided "The Legislature recognizes that school districts and public charter schools will receive funding for salaries in Fiscal Year 2010, and encourages school districts and public charter schools to accommodate such reductions by either reducing the amount paid per employee, reducing the number of contract days, or both. Those choosing to reduce contract days shall make such reductions without impacting student-teacher contact time."

Section 8 of S.L. 2013, ch. 340 provided "The provisions of this act shall be null, void and of no force and effect after June 30, 2013."

Effective Dates.

Section 8 of S.L. 2013, ch. 340 declared an emergency. Approved April 11, 2013.

33-1004A. Experience and education multiplier. [Effective July 1, 2013.] — Each instructional and administrative staff position shall be assigned an appropriate multiplier based upon the following table:

EXPERIENCE AND EDUCATION

Years	BA	BA + 12	BA + 24	MA BA + 36	MA + 12 BA + 48	MA + 24 BA + 60	MA + 36 ES/DR
0	1.00000	1.03750	1.07640	1.11680	1.15870	1.20220	1.24730
1	1.03750	1.07640	1.11680	1.15870	1.20220	1.24730	1.29410
2	1.07640	1.11680	1.15870	1.20220	1.24730	1.29410	1.34260
3	1.11680	1.15870	1.20220	1.24730	1.29410	1.34260	1.39290
4	1.15870	1.20220	1.24730	1.29410	1.34260	1.39290	1.44510
5	1.20220	1.24730	1.29410	1.34260	1.39290	1.44510	1.49930
6	1.24730	1.29410	1.34260	1.39290	1.44510	1.49930	1.55550
7	1.29410	1.34260	1.39290	1.44510	1.49930	1.55550	1.61380
8	1.34260	1.39290	1.44510	1.49930	1.55550	1.61380	1.67430
9	1.39290	1.44510	1.49930	1.55550	1.61380	1.67430	1.73710
10	1.39290	1.49930	1.55550	1.61380	1.67430	1.73710	1.80220
11	1.39290	1.49930	1.55550	1.61380	1.73710	1.80220	1.86980
12	1.39290	1.49930	1.55550	1.61380	1.73710	1.86980	1.93990
13 or more	1.39290	1.49930	1.55550	1.61380	1.73710	1.86980	2.01260

In determining the experience factor, the actual years of teaching or administrative service in a public school, in an accredited private or parochial school, or beginning in the 2005-06 school year and thereafter in an accredited college or university shall be credited.

In determining the education factor, only credits earned after initial certification, based upon a transcript on file with the teacher certification office of the state department of education, earned at an institution of higher education accredited by the state board of education or a regional accrediting association, shall be allowed. Instructional staff whose initial certificate is an occupational specialist certificate shall be treated as BA degree prepared instructional staff. Credits earned by such occupational specialist

instructional staff after initial certification shall be credited toward the education factor.

In determining the statewide average multiplier for instructional staff, no multiplier in excess of 1.59092 shall be used. If the actual statewide average multiplier for instructional staff, as determined by this section, exceeds 1.59092, then each school district's instructional staff multiplier shall be multiplied by the result of 1.59092 divided by the actual statewide average multiplier for instructional staff.

In determining the statewide average multiplier for administrative staff, no multiplier in excess of 1.86643 shall be used. If the actual statewide average multiplier for administrative staff, as determined by this section, exceeds 1.86643, then each school district's administrative staff multiplier shall be multiplied by the result of 1.86643 divided by the actual statewide average multiplier for administrative staff.

History.

I.C., § 33-1004A, as added by 1994, ch. 428, § 6, p. 1368; am. 2000, ch. 67, § 1, p. 151; am. 2003, ch. 371, § 4, p. 983; am. 2003, ch. 375, § 4, p. 1002; am. 2004, ch. 341, § 4, p. 1015; am. 2006, ch. 260, § 1, p. 799; am. 2008, ch. 158, § 1, p. 455; am. 2009, ch. 285, § 1, p. 858; am. 2010, ch. 234, § 32, p. 531; am. 2013, ch. 267, § 1, p. 694; am. 2013, ch. 326, § 11, p. 850.

STATUTORY NOTES

Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 267, deleted the former last sentence of the third paragraph, which read, "For the time period July 1, 2010, through June 30, 2011, instructional and administrative staff shall not advance on the education portion of the multiplier table."

The 2013 amendment, by ch. 326, deleted "minus two (2); provided however, that the experience factor cannot be less than zero (0)" at the end of the second paragraph.

Compiler's Notes.

For this section as effective until June 30, 2013, see the preceding section, also numbered § 33-1004A.

33-1004E. District's salary-based apportionment. [Effective April 11, 2013 through June 30, 2013.] — Each district shall be entitled to a salary-based apportionment calculated as provided in this section.

1. To determine the apportionment for instructional staff, first determine the district average experience and education index by placing all eligible district certificated instructional employees on the statewide index provided in section 33-1004A, Idaho Code. The resulting average is the district index. Districts with an index above the state average index shall receive their actual index but not more than the state average plus .03 for the 1994-95 school year, and shall receive their actual index but not more than the state average plus .06 for the 1995-96 school year, and thereafter shall receive their actual district index. The district instructional staff index shall be multiplied by the instructional base salary of $23,123. The amount so determined shall be multiplied by the district staff allowance for instructional staff determined as provided in section 33-1004(2), Idaho Code. The instructional salary allocation shall be further increased by the amount necessary for each full-time equivalent instructional staff member placed on the experience and education index to be allocated at least the minimum

salary mandated by this section. Full-time instructional staff salaries shall be determined from a salary schedule developed by each district and submitted to the state department of education. No full-time instructional staff member shall be paid less than $30,500. If an instructional staff member has been certified by the national board for professional teaching standards, the staff member shall be designated as a master teacher and receive $2,000 per year for five (5) years. The instructional salary shall be increased by $2,000 for each master teacher provided however, that no such awards shall be paid for the period July 1, 2010, through June 30, 2011, nor shall any liabilities accrue or payments be made pursuant to this section in the future to any individuals who would have otherwise qualified for a payment during this stated time period. The resulting amount is the district's salary-based apportionment for instructional staff. For purposes of this section, teachers qualifying for the salary increase as master teacher shall be those who have been recognized as national board certified teachers as of July 1 of each year.

2. To determine the apportionment for district administrative staff, first determine the district average experience and education index by placing all eligible certificated administrative employees on the statewide index provided in section 33-1004A, Idaho Code. The resulting average is the district index. Districts with an index above the state average index shall receive their actual index but not more than the state average plus .03 for the school year 1994-95, and shall receive their actual index but not more than the state average index plus .06 for the 1995-96 school year, and thereafter shall receive their actual district index. The district administrative staff index shall be multiplied by the base salary of $31,833. The amount so determined shall be multiplied by the district staff allowance for administrative staff determined as provided in section 33-1004(3), Idaho Code. The resulting amount is the district's salary-based apportionment for administrative staff.

3. To determine the apportionment for classified staff, multiply $19,058 by the district classified staff allowance determined as provided in section 33-1004(4), Idaho Code. The amount so determined is the district's apportionment for classified staff.

4. The district's salary-based apportionment shall be the sum of the apportionments calculated in subsections 1., 2. and 3., of this section, adjusted by the following percentage:

Fiscal Year	Percentage
2013	1.67%

plus the benefit apportionment as provided in section 33-1004F, Idaho Code.

History.

I.C., § 33-1004E, as added by 1994, ch. 428, § 9, p. 1368; am. 1996, ch. 77, § 11, p. 242; am. 1998, ch. 363, § 5, p. 1138; am. 1999, ch. 350, § 1, p. 936; am. 1999, ch. 386, § 5, p. 1075; am. 2001, ch. 359, § 5, p. 1263; am. 2001, ch. 389, § 1, p. 1368; am. 2004, ch. 341, § 5, p. 1015; am. 2004, ch. 342, § 9, p. 1019; am. 2006, ch. 417, § 7, p. 1288; am. 2006, ch. 418, § 8, p. 1291; am. 2006, ch. 420, § 5, p. 1300; am. 2007, ch. 90, § 15, p. 246; am. 2007, ch. 350, § 5, p. 1028; am. 2007, ch. 351, § 8, p. 1035; am. 2007, ch. 352, § 9, p. 1039; am. 2008, ch. 362, § 5, p. 991; am. 2008, ch. 363, § 8, p. 994; am. 2008, ch. 391, § 8, p. 1075; am. 2009, ch. 270, § 5, p. 813; am. 2009, ch. 271, § 8, p. 816; am. 2009, ch. 272, § 9, p. 818; am. 2010, ch. 234, § 17, p. 531; am. 2011, ch. 332, § 11, p. 970; am. 2012, ch. 293, § 13, p. 809; am. 2013, ch. 340, § 4, p. 890.

STATUTORY NOTES

Amendments.

This section was amended by three 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 270, in subsection 2., substituted "$34,705" for "$36,532."

The 2009 amendment, by ch. 271, in subsection 1., substituted "$24,567" for "$25,231" and "$30,915" for "$31,750."

The 2009 amendment, by ch. 272, in subsection 3., substituted "$19,840" for "$20,376."

The 2010 amendment, by ch. 234, in subsection (1), in the third sentence, substituted "$23,565" for "$24,567," in the seventh sentence, substituted "$29,655" for "$30,915," and added the proviso in the ninth sentence; in the fourth sentence in subsection (2), substituted "$32,441" for "$34,705"; and in subsection (3), substituted "$19,041" for "$19,840."

The 2011 amendment, by ch. 332, substituted "$23,123" for "$23,565" in subsection 1; substituted "$31,833" for "32,441" in subsection 2; and substituted "$18,684" for "$19,041" in subsection 3.

The 2012 amendment, by ch. 293, substituted "$30,500" for "$29,655 for fiscal year 2011, or $30,000 thereafter" at the end of the seventh sentence in subsection 1 and substituted "$19,058" for "$18,684" in the first sentence in subsection 3.

The 2013 amendment, by ch. 340, added "adjusted by the following percentage: Fiscal Year 2013 Percentage (1.67%)" in subsection 4.

Legislative Intent.

Section 15 of S.L. 2010, ch. 234 provided "It is legislative intent that public school employee benefits paid by the state, pursuant to Section 33-1004F, Idaho Code, be paid for all eligible employees that a school district or charter school actually employs with its salary-based apportionment allotment, regardless of whether such employees are categorized as administrative, instructional or classified staff."

Section 25 of S.L. 2010, ch. 234 provided "It is legislative intent that school districts continuing to use discretionary funds for safe and drug-free purposes may include the following:

"(1) Prevention programs, student assistance programs that address early identification and referral, and aftercare.

"(2) An advisory board to assist each district in making decisions relating to their program."

Compiler's Notes.

For this section as effective July 1, 2013, see the following section, also numbered § 33-1004E.

This section was amended by S.L. 2011, ch. 247, effective April 8, 2011. The amendment by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendments by S.L. 2011, ch. 300 and S.L. 2012, ch. 251, became null and void, and this section returned to its pre-2011 provisions, as amended by S.L. 2011. ch. 332 and S.L. 2012, ch. 293, prior to its 2013 amendment.

Section 8 of S.L. 2013, ch. 340 provided "The provisions of this act shall be null, void and of no force and effect after June 30, 2013."

Effective Dates.

Section 8 of S.L. 2013, ch. 340 declared an emergency. Approved April 11, 2013.

33-1004E. District's salary-based apportionment. [Effective July 1, 2013.] — Each district shall be entitled to a salary-based apportionment calculated as provided in this section.

1. To determine the apportionment for instructional staff, first determine the district average experience and education index by placing all eligible district certificated instructional employees on the statewide index provided in section 33-1004A, Idaho Code. The resulting average is the district index. Districts with an index above the state average index shall receive their actual index but not more than the state average plus.03 for the 1994-95 school year, and shall receive their actual index but not more than the state average plus.06 for the 1995-96 school year, and thereafter shall receive their actual district index. The district instructional staff index shall be multiplied by the instructional base salary of $23,123. The amount so determined shall be multiplied by the district staff allowance for instructional staff determined as provided in section 33-1004(2), Idaho Code. The

instructional salary allocation shall be further increased by the amount necessary for each full-time equivalent instructional staff member placed on the experience and education index to be allocated at least the minimum salary mandated by this section. Full-time instructional staff salaries shall be determined from a salary schedule developed by each district and submitted to the state department of education. No full-time instructional staff member shall be paid less than $31,000. If an instructional staff member has been certified by the national board for professional teaching standards, the staff member shall be designated as a master teacher and receive $2,000 per year for five (5) years. The instructional salary shall be increased by $2,000 for each master teacher provided however, that no such awards shall be paid for the period July 1, 2010, through June 30, 2011, nor shall any liabilities accrue or payments be made pursuant to this section in the future to any individuals who would have otherwise qualified for a payment during this stated time period. The resulting amount is the district's salary-based apportionment for instructional staff. For purposes of this section, teachers qualifying for the salary increase as master teacher shall be those who have been recognized as national board certified teachers as of July 1 of each year.

2. To determine the apportionment for district administrative staff, first determine the district average experience and education index by placing all eligible certificated administrative employees on the statewide index provided in section 33-1004A, Idaho Code. The resulting average is the district index. Districts with an index above the state average index shall receive their actual index but not more than the state average plus.03 for the school year 1994-95, and shall receive their actual index but not more than the state average index plus.06 for the 1995-96 school year, and thereafter shall receive their actual district index. The district administrative staff index shall be multiplied by the base salary of $31,833. The amount so determined shall be multiplied by the district staff allowance for administrative staff determined as provided in section 33-1004(3), Idaho Code. The resulting amount is the district's salary-based apportionment for administrative staff.

3. To determine the apportionment for classified staff, multiply $19,058 by the district classified staff allowance determined as provided in section 33-1004(4), Idaho Code. The amount so determined is the district's apportionment for classified staff.

4. The district's salary-based apportionment shall be the sum of the apportionments calculated in subsections 1., 2. and 3., of this section, plus the benefit apportionment as provided in section 33-1004F, Idaho Code.

History.

I.C., § 33-1004E, as added by 1994, ch. 428, § 9, p. 1368; am. 1996, ch. 77, § 11, p. 242; am. 1998, ch. 363, § 5, p. 1138; am. 1999, ch. 350, § 1, p. 936; am. 1999, ch. 386, § 5, p. 1075; am. 2001, ch. 359, § 5, p. 1263; am. 2001, ch. 389, § 1, p. 1368; am. 2004, ch. 341, § 5, p. 1015; am. 2004, ch. 342, § 9, p. 1019; am. 2006, ch. 417, § 7, p. 1288; am. 2006, ch. 418, § 8, p. 1291; am. 2006, ch. 420, § 5, p. 1300; am. 2007, ch. 90, § 15, p. 246; am. 2007, ch. 350, § 5, p. 1028; am. 2007, ch. 351, § 8, p. 1035; am. 2007, ch. 352, § 9, p. 1039; am. 2008, ch. 362, § 5, p. 991; am. 2008, ch. 363, § 8, p. 994; am. 2008, ch. 391, § 8, p. 1075; am. 2009, ch. 270, § 5, p. 813; am. 2009, ch. 271, § 8, p. 816; am. 2009, ch. 272, § 9, p. 818; am. 2010, ch. 234, § 17, p. 531; am. 2011, ch. 332, § 11, p. 970; am. 2012, ch. 293, § 13, p. 809; am. 2013, ch. 326, § 12, p. 850.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 326, substituted "less than $31,000" for "less than $30,500" at the end of the eighth sentence in subsection 2.

Compiler's Notes.

For this section as effective until June 30, 2013, see the preceding section, also numbered § 33-1004E.

33-1004F. Obligations to retirement and social security benefits. [Effective until July 1, 2014.] — Based upon the actual salary-based apportionment, as determined in section 33-1004E, Idaho Code, there shall be allocated that amount required to meet the employer's obligations to the public employee retirement system and to social security. In addition, from the moneys distributed pursuant to section 33-1004J, Idaho Code, there shall be allocated the portion required to meet the employer's obligations to the public employee retirement system and to social security for the remainder of the moneys so distributed.

History.

I.C., § 33-1004F, as added by 1994, ch. 428, § 10, p. 1368; am. 2013, ch. 338, § 3, p. 877.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 338, § 3, deleted the subsection 1. designation, inserted the last sentence, and deleted former subsection 2., which read: "If a district's qualifying salaries total more than the district's salary-based apportionment, there shall be allocated an additional amount to meet the employer's obligation to the public employee retirement system and to social security equal to two-thirds (2/3) of the additional obligation for the school year 1994-95. If a district's qualifying salaries total more than the district's salary-based apportionment, there shall be allocated an additional amount to meet the employer's obligation to the public employee retirement system and to social security equal to one-third (1/3) of the additional obligation for the school year 1995-96. Thereafter, the benefit allocation shall be based solely upon the provisions of subsection 1. of this section."

Compiler's Notes.

For this section as effective July 1, 2014, see the following section, also numbered § 33-1004F.

This section was amended by S.L. 2011, ch. 247, effective April 8, 2011. The amendment by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2012, ch. 267, became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

Effective Dates.

Section 9 of S.L. 2013, ch. 338 provided that sections 1, 3, 5, 6, and 8 of the act should take effect July 1, 2013.

33-1004F. Obligations to retirement and social security benefits. [Effective July 1, 2014.] — 1. Based upon the actual salary-based apportionment, as determined in section 33-1004E, Idaho Code, there shall be allocated that amount required to meet the employer's obligations to the public employee retirement system and to social security.

2. If a district's qualifying salaries total more than the district's salary-based apportionment, there shall be allocated an additional amount to meet the employer's obligation to the public employee retirement system and to social security equal to two-thirds (2/3) of the additional obligation for the

school year 1994-95. If a district's qualifying salaries total more than the district's salary-based apportionment, there shall be allocated an additional amount to meet the employer's obligation to the public employee retirement system and to social security equal to one-third (1/3) of the additional obligation for the school year 1995-96. Thereafter, the benefit allocation shall be based solely upon the provisions of subsection 1. of this section.

History.
I.C., § 33-1004F, as added by 1994, ch. 428, § 10, p. 1368; am. 2013, ch. 338, §§ 3, 4, p. 877.

STATUTORY NOTES

Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 338, § 3, deleted the subsection 1. designation, inserted the last sentence, and deleted former subsection 2., which read: "If a district's qualifying salaries total more than the district's salary-based apportionment, there shall be allocated an additional amount to meet the employer's obligation to the public employee retirement system and to social security equal to two-thirds (2/3) of the additional obligation for the school year 1994-95. If a district's qualifying salaries total more than the district's salary-based apportionment, there shall be allocated an additional amount to meet the employer's obligation to the public employee retirement system and to social security equal to one-third (1/3) of the additional obligation for the school year 1995-96. Thereafter, the benefit allocation shall be based solely upon the provisions of subsection 1. of this section."

The 2013 amendment, by ch. 338, § 4, in subsection 1, added the subsection 1 designation and deleted the last sentence, which read: "In addition, from the moneys distributed pursuant to section 33-1004J, Idaho Code, there shall be allocated the portion required to meet the employer's obligations to the public employee retirement system and to social security for the remainder of the moneys so distributed"; and added subsection 2.

Compiler's Notes.

For this section as effective until July 1, 2014, see the preceding section, also numbered § 33-1004F.

Effective Dates.

Section 9 of S.L. 2013, ch. 338 provided that sections 2, 4, and 7 of the act should take effect July 1, 2014.

33-1004G. Early retirement incentive — Administrative staff excluded . [Repealed.]

Repealed by S.L. 2013, ch. 97, § 1, effective March 21, 2013.

History.
I.C., § 33-1004G, as added by 1996, ch. 143, § 1, p. 472; am. 1997, ch. 145, § 1, p. 420; am. 1999, ch. 335, § 1, p. 911; am. 2000, ch. 167, § 1, p. 418; am. 2000, ch. 266, § 5, p. 743; am. 2003, ch. 299, § 6, p. 814; am. 2003, ch. 375, § 6, p. 1002; am. 2006, ch. 244, § 6, p. 740.

33-1004H. Employing retired teachers and administrators. — (1) Notwithstanding the provisions of section 33-514, 33-1271 or 33-1273, Idaho Code, school districts may employ certificated school teachers and administrators who are receiving retirement benefits from the public employee retirement system of Idaho, except those who received benefits under the early retirement program previously provided by the state in positions requiring such certification, as at-will employees. Any employment contract between the retiree and the school district shall be separate and apart from the collective bargaining agreement of the school district.

(2) Retirees employed under this section shall accrue one (1) day per month of sick leave, with no annual sick leave accumulation unless

additional sick leave is negotiated between the candidate and the school district at the time of employment. No sick leave accrued under this section qualifies for unused sick leave benefits under section 33-1228, Idaho Code.

(3) School districts are not required to provide health insurance or life insurance benefits to persons employed under this section. Post-termination benefits may be negotiated between the school district and the certificated employee at the time of rehiring but in no event can the parties affect or attempt to affect the provisions governing the public employee retirement system.

History.
I.C., § 33-1004H, as added by 2007, ch. 131, § 1, p. 387; am. 2013, ch. 97, § 2, p. 235.

STATUTORY NOTES

Cross References.
Public employee retirement system, § 59-1301 et seq.

Amendments.
The 2013 amendment, by ch. 97, substituted "previously provided by the state" for "provided in section 33-1004C, Idaho Code" in the first sentence in subsection (1).

Compiler's Notes.
This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

Section 3 of S.L. 2007, ch. 131 provided "The provisions of Section (1) of this act shall be null, void and of no force and effect on and after July 1, 2012." Section 3 of S.L. 2007, ch. 131 was repealed by S.L. 2012, ch. 169, § 1, effective July 1, 2012.

Effective Dates.
Section 3 of S.L. 2013, ch. 97 declared an emergency. Approved March 21, 2013.

33-1004I. Pay for performance — Hard to fill positions — Leadership awards. [Null and void.]

Null and void, pursuant to rejection of Proposition 2 on November 6, 2012.

History.
I.C., § 33-1004I, as added by 2011, ch. 97, § 1, p. 229; am. 2011, ch. 296, § 1, p. 831; am. 2012, ch. 70, § 1, p. 201; am. 2012, ch. 267, § 2, p. 744.

STATUTORY NOTES

Compiler's Notes.
This section was enacted by S.L. 2011, ch. 97, effective March 17, 2011. Session Laws 2011, ch. 97 was the subject of Proposition 2 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section, and the amendments by S.L. 2011, ch. 296, S.L. 2012, ch. 70, and S.L. 2012, ch. 267, became null and void.

33-1004J. Differential pay. [Repealed effective July 1, 2014.] — Of amounts appropriated for the educational support program, moneys shall be distributed for differential pay as provided for in section 33-1002, Idaho Code. Moneys for the differential pay program shall be distributed to school districts requesting grant funds for local excellence in achievement awards. Such distribution shall be based upon each requesting school district's number of support units used to calculate salary-based apportionment, as

compared to the total number of such support units for all such school districts requesting such funds. Funds received shall be paid to certificated or noncertificated employees, subject to local excellence in achievement plans, pursuant to the following criteria:

(1) All plans shall be approved by the local board of trustees, including evidence that the plan was developed with input from the principal, teachers and certificated employees at each school.

(2) Such plan shall not be subject to collective bargaining, any other provision of law notwithstanding.

(3) The plan may allow expenditure of up to forty percent (40%) of the funds for professional development, leadership and resources necessary to implement Idaho core mathematical and English language arts standards.

(4) The plan shall delineate how the moneys will be used for excellence in achievement awards, including the establishment of goals and identifying objective measures of growth in student achievement to be used.

(5) Awards shall be directed at the schoolwide level, the individual level or any other grouping below the schoolwide level.

(6) The plan and grant funds request shall be submitted to the state department of education by no later than October 1, 2013, and funds shall be distributed by the department no later than February 15, 2014.

(7) Each school district receiving grant funds shall submit a report to the state department of education at the end of the fiscal year that details the plan's student achievement results based upon the established criteria. Such report shall include, but not be limited to, measures of growth in student achievement, target benchmarks, results of those measures, and information on the amount of the funds awarded, by individual. The report shall also include a narrative on the effectiveness of the awards in reaching the goals.

(8) Each submitted plan and report shall be posted to the school district and state department of education websites. In addition, the state department of education shall conduct a comparison study of the characteristics, process and features of each plan to the results achieved and shall post such study to its website.

(9) A portion of the moneys so distributed shall be utilized to pay any variable rate-based employer benefit costs.

(10) The payment of any funds to an employee pursuant to this section shall not create any requirement that a school district maintain or repeat such a payment in the future.

For the purposes of this section, the term "school district" also means "public charter school" and the term "board of trustees" also means "board of directors."

History.

I.C., § 33-1004J, as added by 2013, ch. 338, § 5, p. 877.

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 338, § 7.

33-1006. Transportation support program. — (1) The state board of education shall determine what costs of transporting pupils, including maintenance, operation and depreciation of basic vehicles, insurance, payments under contract with other public transportation providers whose vehicles used to transport pupils comply with federal transit administration regulations, "bus testing," 49 CFR part 665, and any revision thereto, as provided in subsection (4)(d) of this section, or other state department of education approved private transportation providers, salaries of drivers, and any other costs, shall be allowable in computing the transportation support program of school districts. Provided however, that the only miles for which costs may be reimbursed shall be those directly associated with transporting students for the purposes of regular school attendance during regular days and hours.

(2) Any costs associated with the addition of vehicle features that are not part of the basic vehicle shall not be allowable in computing the transportation support program of school districts. A basic vehicle is hereby defined as the cost of the vehicle without optional features, plus the addition of essential safety features and features necessary for the transportation of pupils with disabilities.

(3) Each school district shall maintain records and make reports as are required for the purposes of this section.

(4) The transportation support program of a school district shall be based upon the allowable costs of:

(a) Transporting public school pupils one and one-half (1 1/2) miles or more to school;

(b) Transporting pupils less than one and one-half (1 1/2) miles as provided in section 33-1501, Idaho Code, when approved by the state board of education;

(c) The costs of payments when transportation is not furnished, as provided in section 33-1503, Idaho Code;

(d) The transportation program for grades six (6) through twelve (12), upon the costs of payments pursuant to a contract with other public or private transportation providers entered into as provided in section 33-1510, Idaho Code, if the school district establishes that the reimbursable costs of transportation under the contract are equal to or less than the costs for school buses;

(e) The employer's share of contributions to the public employee retirement system and to social security.

(5) The state's share of the transportation support program shall be fifty percent (50%) of reimbursable transportation costs of the district incurred during the immediately preceding state fiscal year, except for the cost of state department of education training and fee assessments and bus depreciation and maintenance, for which the state's share shall be eighty-

five percent (85%) of such costs. For school districts that contract for pupil transportation services, the state's share shall be the average state share of costs for district-run operations, based on the statewide total of such costs. Provided however, that the reimbursable costs for any school district shall not exceed one hundred three percent (103%) of the statewide average reimbursable cost per mile or the state average reimbursable cost per student rider, whichever is more advantageous to the school district. If a school district's costs exceed the one hundred three percent (103%) limit when computed by the more advantageous of the two (2) methods, that school district shall be reimbursed at the appropriate percentage designated by this subsection, multiplied by the maximum limit for whichever method is more favorable to the school district. A school district may appeal the application of the one hundred three percent (103%) limit on reimbursable costs to the state board of education, which may establish for that district a new percentile limit for reimbursable costs compared to the statewide average, which is higher than one hundred three percent (103%). In doing so, the state board of education may set a new limit that is greater than one hundred three percent (103%), but is less than the percentile limit requested by the school district. However, the percentage increase in the one hundred three percent (103%) cap shall not exceed the percentage of the district's bus runs that qualify as a hardship bus run, pursuant to this subsection. Any costs above the new level established by the state board of education shall not be reimbursed. Such a change shall only be granted by the state board of education for hardship bus runs. To qualify as a hardship bus run, such bus run shall meet at least two (2) of the following criteria:

(a) The number of student riders per mile is less than fifty percent (50%) of the statewide average number of student riders per mile;

(b) Less than a majority of the miles on the bus run are by paved surface, concrete or asphalt, road;

(c) Over ten percent (10%) of the miles driven on the bus run are a five percent (5%) slope or greater.

(6) Beginning on July 1, 2005, any eligible home-based public virtual school may claim transportation reimbursement for the prior fiscal year's cost of providing educational services to students. In order to be eligible, such a school shall have at least one (1) average daily attendance divisor, pursuant to section 33-1002, Idaho Code, that is greater than the median divisor shown for any category of pupils, among the actual divisors listed. For the purposes of paragraphs (a), (b) and (c) of this subsection (6), "education provider" means the home-based public virtual school or an entity that has legally contracted with the home-based public virtual school to supply education services. Reimbursable costs shall be limited to the costs of:

(a) Providing an internet connection service between the student and the education provider, not including the cost of telephone service;

(b) Providing electronic and computer equipment used by the student to transmit educational material between the student and the education provider;

(c) Providing a toll-free telephone service for students to communicate with the education provider;

(d) Providing education-related, face-to-face visits by representatives of the home-based public virtual school, with such reimbursements limited to the mileage costs set for state employee travel by the state board of examiners; and

(e) Any actual pupil transportation costs that would be reimbursable if claimed by a school district.

The total reimbursement for such home-based public virtual schools shall be exempt from the statewide average cost per mile limitations of this section. The state's share of reimbursable costs shall be eighty-five percent (85%), subject to the statewide cost per student rider provisions of this section. For the purposes of such home-based public virtual school, the number of student riders shall be the same as the number of pupils in average daily attendance.

(7) The state department of education shall calculate the amount of state funds lost in fiscal year 2010 by each school district as a result of the decrease in the state reimbursement from eighty-five percent (85%) to fifty percent (50%) of certain eligible costs, including the reduction calculated for districts that contract for pupil transportation services, and excluding any reductions made due to the limitation on reimbursable expenses, all pursuant to subsection (5) of this section. The amount so calculated shall be distributed to each school district in fiscal year 2010. For each fiscal year thereafter, the amount distributed pursuant to this subsection (7) for each school district shall be determined as follows:

(a) Divide the amount distributed to the district pursuant to this subsection (7) in fiscal year 2010 by the district's support units for fiscal year 2010;

(b) Multiply the result of the calculation found in subsection (7)(a) of this section by the number of support units in the current fiscal year;

(c) Determine the percentage change in statewide transportation reimbursements as provided for in subsection (5) of this section since fiscal year 2010;

(d) Determine the percentage change in statewide student enrollment since fiscal year 2010;

(e) Subtract the result of the calculation found in subsection (7)(d) of this section from the result of the calculation found in subsection (7)(c) of this section;

(f) Adjust the result of the calculation found in subsection (7)(b) of this section by the percentage result from subsection (7)(e) of this section.

For school districts divided after fiscal year 2010, the calculation in subsection (7)(a) of this section shall still be based on the fiscal year 2010 figures for the formerly consolidated district. For public charter schools beginning operations on or after July 1, 2009, all calculations in this subsection (7) that are based on fiscal year 2010 shall instead be based on the public charter school's first fiscal year of operations. For the purposes of this subsection (7), the support units used shall be the number used for calculating salary-based apportionment. Funds distributed pursuant to this subsection (7) shall be used to defray the cost of pupil transportation. If the amount distributed is in excess of a school district's actual pupil transpor-

tation costs, less any state reimbursements provided by subsection (5) of this section, the excess funds may be used at the school district's discretion.

(8) The total moneys paid to school districts and public charter schools for eligible transportation costs shall be reduced by a proportionate amount to equal seven million five hundred thousand dollars ($7,500,000) and shall be used as discretionary spending.

History.

1963, ch. 13, § 130, p. 27; am. 1969, ch. 198, § 1, p. 582; am. 1974, ch. 207, § 1, p. 1536; am. 1979, ch. 254, § 8, p. 661; am. 1980, ch. 179, § 7, p. 382; am. 1994, ch. 428, § 11, p. 1368; am. 1997, ch. 281, § 1, p. 852; am. 2003, ch. 372, § 11, p. 986; am. 2004, ch. 370, § 1, p. 1094; am. 2007, ch. 352, § 10, p. 1039; am. 2009, ch. 284, § 1, p. 852; am. 2010, ch. 234, § 33, p. 531; am. 2012, ch. 52, § 1, p. 148; am. 2013, ch. 168, § 1, p. 386.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 284, added the last sentence in subsection (1); in the introductory paragraph in subsection (5), substituted "fifty percent (50%)" for "eighty-five percent (85%)" and added the exception in the first sentence, added the second sentence, in the third sentence, substituted "Provided however, that the reimbursable costs for any school district shall not exceed" for "Provided the reimbursable costs do not exceed" in the third sentence, substituted "reimbursed at the appropriate percentage designated by this subsection, multiplied by the maximum limit" for "reimbursed at eighty-five percent (85%) of the maximum limit" in the fourth sentence, and, in the last sentence, deleted "display uniquely difficult geographic circumstances and" following "such bus run shall"; deleted subsection (6), which pertained to loans granted to school districts; redesignated former subsection (7) as subsection (6); and added present subsection (7).

The 2010 amendment, by ch. 234, in subsection (1), deleted "or for approved school activities as provided in subsection (4) of this section" from the end; and deleted paragraph (4)(e), which formerly read: "The costs of providing transportation to and from approved school activities as may be approved by rules of the state board of education" and redesignated former paragraph (4)(f) as (4)(e).

The 2012 amendment, by ch. 52, deleted the former last paragraph of subsection (5), which read: "The legislative audits section of the legislative services office shall review cap increases granted by the state board of education pursuant to this section, and shall include findings in the board's regular audit report for any instances in which such increases failed to meet the standards set forth in this subsection."

The 2013 amendment, by ch. 168, added subsection (8)

Legislative Intent.

Section 15 of S.L. 2010, ch. 234 provided "It is legislative intent that public school employee benefits paid by the state, pursuant to Section 33-1004F, Idaho Code, be paid for all eligible employees that a school district or charter school actually employs with its salary-based apportionment allotment, regardless of whether such employees are categorized as administrative, instructional or classified staff."

Section 25 of S.L. 2010, ch. 234 provided "It is legislative intent that school districts continuing to use discretionary funds for safe and drug-free purposes may include the following:

"(1) Prevention programs, student assistance programs that address early identification and referral, and aftercare.

"(2) An advisory board to assist each district in making decisions relating to their program."

Effective Dates.

Section 2 of S.L. 2012, ch. 52, declared an emergency. Approved March 12, 2012.

33-1006A. Pupil transportation audits. — The state department of education shall audit the transportation operations of any school district with more than twenty (20) enrolled students per square mile that meets both of the following criteria:

(a) The school district's reimbursable costs, based on a three (3) year rolling average of the district's reimbursable costs, exceed one hundred

three percent (103%) of the statewide average reimbursable cost per student rider; and

(b) The school district's costs, based on a three (3) year rolling average, are higher on a cost per student rider basis than on a cost per mile basis, as compared to the statewide average reimbursable costs for such measures.

For school districts audited under the provisions of this section, the state department of education shall furnish written recommendations for changes to improve the efficiency of transportation operations including, but not limited to, changes in bell times and routing. Recommendations shall not include changes regarding the decision of a school district on whether to contract for pupil transportation services or to provide such services directly. The recommendations shall state the amount that the department estimates that the school district's total expenditures will be reduced by implementing each recommendation. The department shall discuss its recommendations with the school district prior to finalizing them.

School districts failing to implement any recommendations in the subsequent school year shall have their transportation reimbursement reduced in that year by the lesser of the amount that the department estimated would be saved by all unimplemented recommendations, or the amount that the district's reimbursement would be reduced if the district were prohibited from using the cost per mile cap calculation pursuant to section 33-1006(5), Idaho Code.

History.
I.C., § 33-1006A, as added by 2009, ch. 284, § 2, p. 852.

STATUTORY NOTES

Effective Dates.
Section 4 of S.L. 2009, ch. 284 declared an emergency and made section 2 of the act effective upon passage and approval. Approved May 5, 2009.

33-1007. Exceptional education program report. — The state department of education shall report annually to the legislature the status of the exceptional education support program. The report shall include, but not be limited to, data concerning the number of students with disabilities and gifted students served, the districts which operate programs and the nature of the program, the money distributed pursuant to the provisions of the exceptional education support program, and estimated number of students with disabilities and gifted students, requiring but not receiving services. The report shall be filed not later than the fifteenth day of the legislative session and may include recommendations of the board relating to administrations of the program.

History.
I.C., § 33-1006A, as added by 1974, ch. 127, § 7, p. 1305; am. and redesig. 1980, ch. 179, § 8, p. 382; am. 1985, ch. 107, § 7, p. 191; am. 1994, ch. 428, § 12, p. 1368; am. 2010, ch. 235, § 14, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, in the second sentence, substituted "number of students with disabilities and gifted students served" for "number of persons served, both handicapped and gifted" and "estimated number of students with disabilities and gifted students" for "estimated number of persons, both handicapped and gifted."

33-1009. Payments from the public school income fund. —

1.a. Payments of the state general account appropriation for public school support shall be made each year by the state board of education to the public school districts of the state in five (5) payments. Payments to the districts shall be made not later than the fifteenth day of August, the first day of October, the fifteenth day of November, the fifteenth day of February, and the fifteenth day of May each year. The first two (2) payments by the state board of education shall be approximately thirty percent (30%) of the total general account appropriation for the fiscal year, while the third, fourth and fifth payments shall be approximately twenty percent (20%), ten percent (10%) and ten percent (10%), respectively, except as provided for in section 33-5209C, Idaho Code. Amounts apportioned due to a special transfer to the public school income fund to restore or reduce a deficiency in the prior year's transfer pursuant to subsection 4. of this section shall not be subject to this limitation.

b. Payments of moneys, other than the state general account appropriation, that accrue to the public school income fund shall be made by the state board of education to the school districts of the state on the fifteenth day of November, February, May and July each year. The total amount of such payments shall be determined by the state department of education and shall not exceed the amount of moneys available and on deposit in the public school income fund at the time such payment is made.

c. Amounts apportioned due to a special transfer to the public school income fund to restore or reduce a deficiency in the prior year's transfer pursuant to subsection 4. of this section shall not be subject to the limitation imposed by paragraphs a. and b. of this subsection.

2. Payments made to the school districts in August, October and November are advance payments for the current year and may be based upon payments from the public school income fund for the preceding school year. Each school district may receive its proportionate share of the advance payments in the same ratio that its total payment for the preceding year was to the total payments to all school districts for the preceding year.

3. No later than the fifteenth day of February in each year, the state department of education shall compute the state distribution factor based on the total average daily attendance through the first Friday in November. The factor will be used in payments of state funds in February and May. Attendance shall be reported in a format and at a time specified by the state department of education.

As of the thirtieth day of June of each year the state department of education shall determine final payments to be made on July fifteenth next succeeding to the several school districts from the public school income fund

for the school year ended June 30. The July payments shall take into consideration:

a. The average daily attendance of the several school districts for the twenty-eight (28) best weeks of the school year completed not later than the thirtieth of June;

b. All funds available in the public school income fund for the fiscal year ending on the thirtieth of June;

c. All payments distributed for the current fiscal year to the several school districts;

d. The adjustment based on the actual amount of discretionary funds per support unit required by the provisions of section 33-1018, Idaho Code;

e. Payments made or due for the transportation support program and the exceptional education support program. The state department of education shall apportion and direct the payment to the several school districts the moneys in the public school income fund in each year, taking into account the advance made under subsection 2. of this section, in such amounts as will provide in full for each district its support program, and not more than therefor required, and no school district shall receive less than fifty dollars ($50.00).

4. If the full amount appropriated to the public school income fund from the general account by the legislature is not transferred to the public school income fund by the end of the fiscal year, the deficiency resulting therefrom shall either be restored or reduced through a special transfer from the general account in the first sixty (60) days of the following fiscal year, or shall be calculated in computing district levies, and any additional levy shall be certified by the state superintendent of public instruction to the board of county commissioners and added to the district's maintenance and operation levy. If the deficiency is restored or reduced by special transfer, the amount so transferred shall be in addition to the amount appropriated to be transferred in such following fiscal year and shall be apportioned to each school district in the same amount as each would have received had the transfer been made in the year the deficiency occurred. The state department of education shall distribute to the school district the full amount of the special transfer as soon as practical after such transfer is made. In making the levy computations required by this subsection the state department of education shall take into account and consider the full amount of money receipted into the public school income fund from all sources for the given fiscal year. Deficits in the transfer of the appropriated amount of general account revenue to the public school income fund shall be reduced by the amount, if any, that the total amount receipted from other sources into the public school income fund exceeds the official estimated amount from those sources. The official estimate of receipts from other sources shall be the total amount stated by the legislature in the appropriation bill. The provisions of this subsection shall not apply to any transfers to or from the public education stabilization fund.

5. Any apportionments in any year, made to any school district, which may within the succeeding three (3) year period be found to have been in error either of computation or transmittal, may be corrected during the

three (3) year period by reduction of apportionments to any school district to which over-apportionments may have been made or received, and corresponding additions to apportionments to any school district to which under-apportionments may have been made or received.

History.

1963, ch. 13, § 133, p. 27; am. 1963, ch. 322, § 9, p. 919; am. 1967, ch. 243, § 1, p. 707; am. 1969, ch. 144, § 1, p. 466; am. 1972, ch. 352, § 5, p. 1040; am. 1979, ch. 254, § 9, p. 661; am. 1980, ch. 179, § 10, p. 382; am. 1981, ch. 185, § 1, p. 329; am. 1983, ch. 4, § 10, p. 6; am. 1983, ch. 147, § 1, p. 398; am. 1984, ch. 180, § 2, p. 426; am. 1985, ch. 107, § 8, p. 191; am. 1996, ch. 322, § 26, p. 1029; am. 1997, ch. 90, § 1, p. 215; am. 2003, ch. 372, § 12, p. 986; am. 2007, ch. 350, § 6, p. 1028; am. 2012, ch. 340, § 3, p. 945; am. 2013, ch. 343, § 1, p. 908.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 340, in subsection 2, substituted "may be based" for "will be based" in the first sentence and substituted "may receive" for "shall receive" in the second sentence.

The 2013 amendment, by ch. 343, inserted "except as provided for in section 33-5209C, Idaho Code" at the end of the third sentence in paragraph 1.a.

Compiler's Notes.

S.L. 2012, Chapter 340 became law without the signature of the governor.

Effective Dates.

Section 17 of S.L. 2013, ch. 343 provided that "Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013."

33-1019. Allocation for school building maintenance required. — (1) School districts shall annually allocate moneys for school building maintenance from any source available to the district equal to at least two percent (2%) of the replacement value of school buildings, less the receipt of state funds as provided in this section. Any school district expending more than four percent (4%) of the replacement value of school buildings for school building maintenance in any single fiscal year, beginning with the expenditures of fiscal year 2005, may apply the excess as a credit against the two percent (2%) requirement of this section until such credit is depleted or fifteen (15) years have expired. The state shall annually provide funds to be allocated for school building maintenance as follows:

(a) Divide one (1) by the school district's value index for the fiscal year, as calculated pursuant to section 33-906B, Idaho Code; and

(b) Multiply the result by one-half of one percent (0.5%) of the replacement value of school buildings.

(c) For purposes of the calculation in this subsection (1), public charter schools shall be assigned a value index of one (1).

(2) State funds shall be appropriated through the educational support program/division of facilities and disbursed from the school district building account. The order of funding sources used to meet the state funding requirements of this section shall be as follows:

(a) State lottery funds distributed pursuant to section 33-905(2), Idaho Code;

(b) If state lottery funds are insufficient to meet the state funding requirements of this section, then other state funds available pursuant to section 33-905(3), Idaho Code, shall be utilized; and

(c) If the funds in paragraphs (a) and (b) of this subsection (2) are

insufficient to meet the state funding requirements of this section, then funds available pursuant to section 33-1018B, Idaho Code, shall be utilized.

(3) Moneys allocated for school building maintenance shall be used exclusively for the maintenance and repair of school buildings or any serious or imminent safety hazard on the property of said school buildings as identified pursuant to chapter 80, title 39, Idaho Code, and shall be utilized, first, to abate serious or imminent safety hazards, as identified pursuant to chapter 80, title 39, Idaho Code. Unexpended moneys in a school district's school building maintenance allocation shall be carried over from year to year and shall remain allocated for the purposes specified in this subsection (3). The replacement value of school buildings shall be determined by multiplying the number of square feet of building floor space in school buildings by eighty-one dollars and forty-five cents ($81.45). Notwithstanding the definition in subsection (8) of this section, school buildings that are less than one (1) year old on the first day of school shall not be used in the replacement value calculation. The joint finance-appropriations committee shall annually review the replacement value per square foot when setting appropriations for the educational support program and may make adjustments to this figure as necessary.

(4) For school buildings first occupied between July 1, 2009, through September 30, 2019, regarding the replacement value calculation that school districts are directed to use to determine the amount of moneys such districts shall allocate for school building maintenance as directed by subsection (1) of this section, a portion of the square footage of school buildings first occupied on or after July 1, 2009, and constructed pursuant to the provisions of section 33-356, Idaho Code, shall not be used in the replacement value calculation, based on the following schedule:

(a) For school buildings at least one (1) year old but less than two (2) years old on the first day of school, exclude one hundred percent (100%) of the square footage;

(b) For school buildings at least two (2) years old but less than three (3) years old on the first day of school, exclude eighty percent (80%) of the square footage;

(c) For school buildings at least three (3) years old but less than four (4) years old on the first day of school, exclude sixty percent (60%) of the square footage;

(d) For school buildings at least four (4) years old but less than five (5) years old on the first day of school, exclude forty percent (40%) of the square footage; and

(e) For school buildings at least five (5) years old but less than six (6) years old on the first day of school, exclude twenty percent (20%) of the square footage.

(5) The amount of relief provided to any school district pursuant to subsection (4) of this section shall not exceed the amount that would be provided if the school district had a value index of one (1).

(6) School districts shall submit the following to the state department of education by not later than the third Friday in December:

(a) The number of square feet of school building floor space; and

(b) The funds and fund sources allocated for school building maintenance and any unexpended allocations carried forward from prior fiscal years; and

(c) The projects on which moneys from the school district's school building maintenance allocation were expended, and the amount and categories of expenditures; and

(d) The planned uses of the school district's school building maintenance allocation.

The state department of education shall transmit a summary of such reports to the legislature by not later than January 15 of the following year.

(7) If a school district that is participating in the relief provided for in subsection (4) of this section is forgiven the requirement to allocate the school district portion of the moneys for the two percent (2%) of building replacement value for building maintenance provided in subsection (1) of this section, then once the requirements of subsection (1) of this section are reinstated, the provisions of subsection (4) of this section shall recommence from the time the forgiveness took effect.

(8) For the purposes of this section:

(a) "Annually" means each fiscal year.

(b) "School building" means buildings that are owned by the school district or leased by the school district through a lease-purchase agreement and are regularly occupied by students.

(c) "School district" means a school district or public charter school.

History.

I.C., § 33-1019, as added by 2006, ch. 311, § 8, p. 957; am. 2007, ch. 142, § 1, p. 412; am. 2007, ch. 354, § 6, p. 1051; am. 2009, ch. 169, § 3, p. 512; am. 2012, ch. 66, § 1, p. 188.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 169, updated the internal reference in the next-to-last sentence in subsection (3); and added subsections (4), (5), and (7), redesignating the other subsections accordingly.

The 2012 amendment, by ch. 66, substituted "the third Friday in December" for "December 1" at the end of the introductory paragraph in subsection (6).

Legislative Intent.

Section 1 of S.L. 2009, ch. 169 provided: "Legislative Intent. It is the intent of the Legislature that:

"(1) Every dollar spent on energy costs in an Idaho public school is a dollar that is not spent in the direct education of students in the classroom. As energy costs increase, the diversion of funding away from the classroom will accelerate. The state has a primary interest in minimizing K-12 public school building energy costs since funding for energy comes directly from the state General Fund.

"(2) School districts recognize that funding will always be limited and that efficient use of every dollar is vital to providing the highest possible level of educational services. It is apparent that designing and constructing more energy efficient buildings accrue cumulative benefits to both the state and to the school district. This is because any energy efficiency built into a new school building will save money each and every year of operation for the life of that school building. Small gains in energy efficiency result in large payoffs over the life of operations of a building.

"(3) This act provides an incentive for school districts to use certain design and construction processes for constructing high quality school buildings. Using two processes, integrated design and fundamental commissioning, will result in efficient design and construction implementation of higher performance new public school buildings. Using this design and construction process, it is the intent of this act to make energy efficiency a priority for our school districts in the design

and construction of new public school buildings."

Compiler's Notes.

Section 4 of S.L. 2009, ch. 169 provided: "State Department of Education — Report. On or before July 1, 2018, the State Department of Education shall submit a report to the State Board of Education and the chairmen of the following legislative committees: Senate State Affairs; House Environment, Energy and Technology; Senate and House Education; and the Energy, Environment and Technology Interim Committee. Such report shall detail the extent to which public school districts have participated, implemented and benefited from the provisions of this act."

Section 3 of S.L. 2009, ch. 340 provided: "The provisions of Section 33-1019, Idaho Code, notwithstanding, for the period July 1, 2009, through June 30, 2010, only, an amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Said amount shall be determined by the State Department of Education as follows:

"(a) Subtract from the local maintenance match requirement all plant facility levy funds levied for tax year 2009.

"(b) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (a) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building.

"(c) Divide the balance of any funds remaining after the calculation provided for in subsection (b) of this section, by two (2).

"School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education."

Section 1 of S.L. 2011, ch. 299 provided: "The provisions of Section 33-1019, Idaho Code, notwithstanding, for the period July 1, 2011, through June 30, 2012, only, the current fiscal year's amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows:

"(1) Subtract from the local maintenance match requirement all plant facility levy funds levied for tax year 2011.

"(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building.

"School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education."

Section 1 of S.L. 2012, ch. 331 provided: "The provisions of Section 33-1019, Idaho Code, notwithstanding, for the period July 1, 2012, through June 30, 2013, only, the current fiscal year's amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows:

"(1) Subtract from the local maintenance match requirement all plant facility levy funds levied for tax year 2012.

"(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building.

"School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education."

Section 1 of S.L. 2013, ch 300 provided: "The provisions of Section 33-1019, Idaho Code, notwithstanding, for the period July 1, 2013, through June 30, 2014, only, two-thirds (2/3) of the current fiscal year's amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows:

"(1) Subtract from two-thirds (2/3) of the local maintenance match requirement two-thirds (2/3) of all plant facility levy funds levied for tax year 2012.

"(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any addi-

tional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building. School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education."

33-1020. Idaho digital learning academy funding. — Of the moneys appropriated for the educational support program, an amount shall be distributed to support the Idaho digital learning academy, created pursuant to chapter 55, title 33, Idaho Code. For the purposes of this section, an "enrollment" shall be counted each time an Idaho school age child enrolls in an Idaho digital learning academy class. A single child enrolled in multiple classes shall count as multiple enrollments. Summer enrollments shall be included in the fiscal year that begins that summer. The amount distributed shall be calculated as follows:

(1) A base amount shall be distributed, equal to the current fiscal year's statewide average salary-based apportionment funding per midterm support unit, multiplied by twenty-six (26).

(2) A variable amount shall be distributed, equal to the number of enrollments multiplied by the current fiscal year's appropriation of state funds for the educational support program per student reported in attendance for the first reporting period, divided by twenty-three (23).

The state department of education shall make an estimated distribution of funds to the Idaho digital learning academy by no later than July 31 of each fiscal year, consisting of eighty percent (80%) of the estimated funding for the fiscal year. The balance of all remaining funds to be distributed, pursuant to the calculations in this section, shall be distributed by no later than May 15 of the same fiscal year.

History.

I.C., § 33-1020, as added by 2007, ch. 353, § 12, p. 1045; am. 2013, ch. 154, § 2, p. 360.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 154, in subsection (1), deleted "fixed" preceding "base amount" near the beginning and substituted "twenty-six (26)" for "seven (7)" at the end; deleted former subsection (2), which read, "A variable base amount shall be distributed each time the number of enrollments meets or exceeds an increment of five thousand (5,000). The amount so distributed shall be equal to the number of such increments, multiplied by the current fiscal year's statewide average salary-based apportionment funding per midterm support unit, multiplied by four and thirty-three hundredths (4.33)" and redesignated former subsection (3) as subsection (2); and substituted "appropriation of state funds for the educational support program per student reported in attendance for the first reporting period, divided by twenty-three (23)" for "statewide average salary-based apportionment funding per midterm support unit, divided by one hundred forty-three (143)" in subsection (3).

Compiler's Notes.

This section was amended by S.L. 2011, ch. 247, effective April 8, 2011. The amendment by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2011, ch. 300, became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

33-1021. Math and science requirement. [Effective April 11, 2013 through June 30, 2013.] — In order to meet state graduation requirements regarding math and science courses, moneys shall be distributed to school districts to defray the cost of providing additional math and science courses beginning in fiscal year 2012. Moneys so distributed shall be used to hire additional high school math and science teachers or to defray costs associated with providing math and science courses to high school students. Moneys shall be distributed to school districts from the moneys appropriated to the educational support program for each regular high school, not including alternative schools, based on the following criteria:

(1) For each school with enrollment of 99 or less, distribute the equivalent of one and one-quarter (1.25) of a classified staff position.

(2) For each school with enrollment of 100 to 159, distribute the equivalent of one-ninth (1/9) of a classified staff position.

(3) For each school with enrollment of 160 to 319, distribute the equivalent of two-sevenths (2/7) of a classified staff position.

(4) For each school with enrollment of 320 to 639, distribute the equivalent of one (1.0) instructional staff position, based on the statewide average funding per position.

(5) For each school with enrollment of 640 or more, distribute the equivalent of one (1.0) instructional staff position, based on the statewide average funding per position, and three-quarters (0.75) of a classified staff position.

For the purposes of these school size classifications for regular high schools that serve only grades 10-12, ninth grade students who will attend the regular high school upon matriculating to tenth grade shall be included as enrolled in the regular high school.

History.

I.C., § 33-1021, as added by 2013, ch. 340, § 5, p. 890.

STATUTORY NOTES

Prior Laws.

Former § 33-1021, which comprised I.C., § 33-1021, as added by 2011, ch. 247, § 12, p. 669; am. 2011, ch. 300, § 6, p. 857; am. 2012, ch. 266, § 1, p. 741, was enacted by S.L. 2011, ch. 247, effective April 8, 2011. Session Laws 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section, and the amendments by S.L. 2011, ch. 300 and S.L. 2012, ch. 266, became null and void.

Compiler's Notes.

For this section as effective July 1, 2013, see the following section, also numbered § 33-1021.

Section 8 of S.L. 2013, ch. 340 provided "The provisions of this act shall be null, void and of no force and effect after June 30, 2013."

Effective Dates.

Section 8 of S.L. 2013, ch. 340 declared an emergency. Approved April 11, 2013.

33-1021. Math and science requirement. [Effective July 1, 2013.] — In order to meet state graduation requirements regarding math and science courses, moneys shall be distributed to school districts to defray the cost of providing additional math and science courses. Moneys so distributed shall be used to hire additional high school math and science teachers or to

defray costs associated with providing math and science courses to high school students. Moneys shall be distributed to school districts from the moneys appropriated to the educational support program for each regular high school, not including alternative schools, based on the following criteria:

(1) For each school with enrollment of 99 or less, distribute the equivalent of one and one-quarter (1.25) of a classified staff position.

(2) For each school with enrollment of 100 to 159, distribute the equivalent of one ninth (1/9) of a classified staff position.

(3) For each school with enrollment of 160 to 319, distribute the equivalent of two sevenths (2/7) of a classified staff position.

(4) For each school with enrollment of 320 to 639, distribute the equivalent of one (1.0) instructional staff position, based on the statewide average funding per position.

(5) For each school with enrollment of 640 or more, distribute the equivalent of one (1.0) instructional staff position, based on the statewide average funding per position, and three-quarters (0.75) of a classified staff position. For the purposes of these school size classifications for regular high schools that serve only grades 10-12, ninth grade students who will attend the regular high school upon matriculating to tenth grade shall be included as enrolled in the regular high school.

History.
I.C., § 33-1021, as added by 2013, ch. 98, § 2, p. 236.

STATUTORY NOTES

Compiler's Notes.
For this section as effective until June 30, 2013, see the preceding section, also numbered § 33-1021.

33-1022. Public school technology. [Effective April 11, 2013 through June 30, 2013.] — (1) Moneys shall be expended or distributed from the educational support program for public school technology as follows:

(a) For fiscal year 2013, an amount equal to two hundred twenty-seven (227) multiplied by the per statewide support unit value of salary-based apportionment and discretionary funds. Of this amount, the following percentages shall be utilized pursuant to the following paragraphs of subsection (3) of this section:

Subsection (3)	Percentage
Paragraphs (a) and (c)	46%
Paragraph (b)	54%

(b) The dollars allocated for paragraphs (a) through (c) of subsection (3) of this section may be reallocated among said subsections by the superintendent of public instruction, subject to a ten percent (10%) maximum cumulative change in the allocated amounts.

(2) For the purposes of subsection (1) of this section, the support unit

figure used shall be statewide support units used to calculate the distribution of salary-based apportionment funds in the current fiscal year.

(3) Moneys expended or distributed pursuant to this section shall be utilized for one (1) or more of the following:

(a) Moneys shall be expended for the installation, repair, replacement and support of a wireless technology infrastructure, in each public school serving high school grades, of sufficient capacity to support utilization of mobile computing devices by all students in such grades.

(b) Moneys shall be expended or distributed for classroom technology that assists teachers in the effective and efficient delivery of instruction. At least ninety-seven percent (97%) of the moneys expended or distributed for this paragraph shall be distributed to school districts, public charter schools and the Idaho school for the deaf and blind, less up to five hundred thousand dollars ($500,000) in fiscal year 2013, which may be expended for the development and maintenance of an internet-based clearinghouse of online, nonsectarian K-12 or dual credit courses available from any of the following:

(i) Idaho digital learning academy;

(ii) Idaho public school districts;

(iii) Idaho public charter schools;

(iv) Idaho public colleges and universities; and

(v) Idaho private colleges and universities accredited by the same organization that accredits Idaho's public colleges and universities.

(c) Moneys shall be expended or distributed for professional development and training that promotes the effective use of technology by students, staff and parents, the integration of technology into public school curricula and instructional methods, and the development of plans at the school, district and statewide level for the improved use and integration of technology in learning, and the development and effective utilization of student data.

History.

I.C., § 33-1022, as added by 2013, ch. 340, § 6, p. 890.

STATUTORY NOTES

Prior Laws.

Former § 33-1022, which comprised I.C., § 33-1022, as added by 2011, ch. 247, § 13, p. 669; am. 2012, ch. 220, § 1, p. 601, was enacted by S.L. 2011, ch. 247, effective April 8, 2011. Session Laws 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section, and the amendment by S.L. 2012, ch. 220, became null and void.

Compiler's Notes.

Section 8 of S.L. 2013, ch. 340 provided "The provisions of this act shall be null, void and of no force and effect after June 30, 2013."

Section 31 of S.L. 2013, ch. 326 provided: "Dedicated fund reappropriation authoirty. There is hereby reappropriated to the Public Schools Educational Support Program the unexpended and unencumbered balance of Public School Income Fund moneys allocated pursuant to Section 33-1022(3)(c), Idaho Code, for fiscal year 2013, to be used for the same purposes as originally authorized pursuant to Section 33-1022(3)(c), Idaho Code, for the period July 1, 2013, through June 30, 2014. This measure is taken to satisfy the matching requirements of the J.A. and Kathryn Albertson Foundation funding award to develop an instructional management system."

Effective Dates.
Section 8 of S.L. 2013, ch. 340 declared an emergency. Approved April 11, 2013.

[33-1023] 33-1021. Moneys provided from unanticipated public charter school closure. — In the event a public charter school closes and ceases to provide educational instruction during the course of a school year, the following provisions relating to funding shall apply:

(1) A school district or public charter school shall report to the state department of education all newly enrolled students when such students have enrolled from a public charter school that has closed during a school year.

(2) The state department of education shall use the reported enrollment information provided for in subsection (1) of this section to calculate the funding that the district or public charter school would have received had those reported new enrollees been enrolled in such district for the entire school year. Such funding shall be prorated based on the percent of days left in the school year following the enrollment of new students. Such funding shall be included in the next scheduled payment to the school district or public charter school.

History.
I.C., § [33-1023] 33-1021, as added by 2011, ch. 310, § 1, p. 878.

STATUTORY NOTES

Compiler's Notes.
Both S.L. 2011, ch. 247, § 12, as amended by S.L. 2011, ch. 300, § 6, and S.L. 2011, ch. 310, § 1 enacted a new code section designated as § 33-1021. Because the provision enacted by S.L. 2011, ch. 247 is effective April 8, 2011, it has been retained as § 33-1021. The provision enacted by S.L. 2011, ch. 310, which is effective July 1, 2011, has been designated, through the use of brackets, as § 33-1023 (§ 33-1022 was also enacted by S.L. 2011, ch. 247).

33-1024. Online course portal. — (1) Of the moneys appropriated to the educational support program, up to one hundred fifty thousand dollars ($150,000) may be expended for the development and maintenance of an internet-based portal of available online, nonsectarian K-12 or dual credit courses available from any of the following:

(a) Idaho digital learning academy;

(b) Idaho public school districts;

(c) Idaho public charter schools;

(d) Idaho public colleges and universities;

(e) Idaho private colleges and universities accredited by the same organization that accredits Idaho's public colleges and universities; and

(f) Any provider of online courses; provided however, that the courses available on the portal have been verified and approved by the state department of education to meet state content standards.

(2) At a minimum, the portal shall:

(a) Include and display customer ratings from students and parents, based upon previous student enrollment with the online course, provider

and instructor. Such ratings shall, at a minimum, evaluate the quality of content, instruction, communications and ease of use;

(b) Include the capacity for parents to notify their student's home school of their desire to enroll their student in an online course listed on the portal; and

(c) Facilitate communications between listed online course providers, students and parents and the home school in which the student is enrolled.

History.
I.C., § 33-1024, as added by 2013, ch. 154, § 3, p. 360.

CHAPTER 11

SCHOOL BONDS

SECTION.
33-1102. Purposes for which bonds may be issued.
33-1103. Definitions — Bonds — Limitation on amount — Elections to authorize issuance.
33-1107. Plan and form of bonds — Amortization.
33-1108. Printing of bonds. [Repealed.]
33-1109. Signature and recording of bonds.
33-1111. Sale of bonds.
33-1116. Refunding bonds. [Repealed.]
33-1117. Call or redemption of bonds — Notice.
33-1121. Refunding bonds and advance refunding bonds.
33-1122. Application of other statutes. [Repealed.]
33-1123. Authorization. [Repealed.]
33-1124. Resolution not to be amended or repealed. [Repealed.]
33-1125. Application of bond proceeds — Limitations. [Repealed.]

33-1102. Purposes for which bonds may be issued. — The purposes for which bonds may be issued shall be: To acquire, purchase or improve a school site or school sites; to build a schoolhouse or schoolhouses or other building or buildings; to demolish or remove school buildings; to add to, remodel or repair any existing building; to furnish and equip any building or buildings, including all lighting, heating, ventilation and sanitation facilities and appliances necessary to maintain and operate the buildings of the district; to purchase school buses and to acquire, develop or renovate school facilities to establish, create and develop renewable energy systems as described in section 33-604, Idaho Code. The provisions of section 33-906, Idaho Code, shall not apply to bonds or portions of bonds issued to acquire, develop or renovate school energy systems as authorized in section 33-604, Idaho Code, when the school district begins to sell thermal energy for revenue as authorized in section 33-605, Idaho Code.

History.
1963, ch. 13, § 99, p. 27; am. 2010, ch. 220, § 3, p. 493.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 220, in the first sentence, added "and to acquire, develop or renovate school facilities to establish, cre-

ate and develop renewable energy systems as described in section 33-604, Idaho Code"; and added the last sentence.

33-1103. Definitions — Bonds — Limitation on amount — Elections to authorize issuance. — (1) For the purposes of this chapter the following definitions shall have the meanings specified: "Market value for assessment purposes" means the amount of the last preceding equalized assessment of all taxable property and all property exempt from taxation pursuant to section 63-602G, Idaho Code, and property exempt from taxation pursuant to section 63-602KK, Idaho Code, within the school district on the tax rolls completed and available as of the date of approval by the electorate in the school bond election. "Aggregate outstanding indebtedness" means the total sum of unredeemed outstanding bonds, minus all moneys in the bond interest and redemption fund or funds accumulated for the redemption of such outstanding bonds, and minus the sum of all taxes levied for the redemption of such bonds, with the exception of that portion of such tax levies required for the payment of interest on bonds, which taxes remain uncollected. "Issue," "issued," or "issuance" means a formal delivery of bonds to any purchaser thereof and payment therefor to the school district.

(2) The board of trustees of any school district, upon approval of a majority thereof, may submit to the qualified school district electors of the district the question as to whether the board shall be empowered to issue negotiable coupon bonds of the district in an amount and for a period of time to be named in the notice of election.

(3) An elementary school district which employs not less than six (6) teachers, or a school district operating an elementary school or schools, and a secondary school or schools, or issuing bonds for the acquisition of a secondary school or schools, may issue bonds in an amount not to exceed five percent (5%) of the market value for assessment purposes thereof, less the aggregate outstanding indebtedness; and no other school district shall issue bonds in an amount to exceed at any time two percent (2%) of the market value for assessment purposes thereof less the aggregate outstanding indebtedness. The market value for assessment purposes, the aggregate outstanding indebtedness and the unexhausted debt-incurring power of the district shall each be determined as of the date of approval by the electors in the school bond election.

(4) Notice of the bond election shall be given, the election shall be conducted and the returns thereof canvassed, and the qualifications of electors voting or offering to vote shall be, as provided in title 34, Idaho Code.

(5) The question shall be approved only if the percentage of votes cast at such election were cast in favor thereof is that which now, or may hereafter be, set by the constitution of the state of Idaho. Upon such approval of the issuance of bonds, the same may be issued at any time after the date of such election.

History.

1963, ch. 13, § 100, p. 27; am. 1973, ch. 282, § 3, p. 597; am. 1974, ch. 4, § 1, p. 20; am. 1975, ch. 88, § 1, p. 181; am. 1979, ch. 114, § 1, p. 359; am. 1979, ch. 254, § 12, p. 661; am. 1980, ch. 205, § 1, p. 469; am. 1980, ch. 350, § 12, p. 887; am. 1996, ch. 322, § 27, p. 1029; am. 2001, ch. 336, § 1, p. 1194; am. 2007, ch. 358, § 1, p. 1057; am. 2008, ch. 400, § 6, p. 1100; am. 2009, ch. 341, § 48, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, substituted "title 34, Idaho Code" for "sections 33-401 through 33-406, Idaho Code" in subsection (4).

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-1107. Plan and form of bonds — Amortization. — School district bonds shall be issued in denominations to be determined by the board of trustees.

No school district bonds shall be issued except upon an amortization plan. The first amortized principal payment shall mature and be payable not more than two (2) years from and after the date of the bonds, and the various annual maturities of any issue of bonds shall be in such principal amounts as will, together with accruing interest on all outstanding bonds of such issue, be met and paid by an equal annual tax levy during the term for which such bonds shall be issued and shall satisfy one (1) of the following:

(1) The annual tax levy in any year shall not exceed by more than ten percent (10%) the average annual tax levy if the principal and interest coming due on the bonds was repaid in equal annual amounts; or

(2) The annual tax levy in any year shall not exceed by more than ten percent (10%) the average annual tax levy if the principal and interest coming due on the bonds, together with the principal and interest coming due on all other outstanding bonds of the school district, was repaid in equal annual amounts; or

(3) The annual tax levy shall result in the repayment of principal and interest coming due on the bonds, or the bonds, together with the principal and interest coming due on all other outstanding bonds of the school district, more rapidly than an equal annual tax levy.

Whenever the amortization plan does not satisfy any of the foregoing alternatives, the board of trustees may adopt such amortization plan as it shall find will result to the benefit and advantage of the district, and the board of trustees may issue and sell such bonds with such annual maturities as it shall determine either prior to or after the fixing of the interest rates such bonds will bear, and in every such instance it shall be permissible for the board of trustees to issue such bonds in the annual maturities so determined upon and bearing the rate or rates of interest ascertained upon the sale of such bonds, and the plan and form thereof together with the contract, if any, for the issue must be approved by the state superintendent of public instruction.

Subject to the provisions of this section, bonds may be issued as serial or term bonds.

Each bond shall bear interest from the date of issue, payable semiannually on the days of such months as shall be determined by the board of

trustees, at such interest rate as said board may determine. Each bond of any issue shall be numbered in a consecutive series. Each issue of bonds shall mature and be paid in full not more than thirty (30) years from the date of the bonds.

No issue of school bonds shall at any time be sold at less than its aggregate par value.

History.
1963, ch. 13, § 103, p. 27; am. 1963, ch. 263, § 1, p. 672; am. 1972, ch. 121, § 1, p. 240; am. 1988, ch. 135, § 1, p. 242; am. 2013, ch. 183, § 1, p. 437.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 183, rewrote the section to the extent that a detailed comparison is impracticable.

33-1108. Printing of bonds. [Repealed.]

Repealed by S.L. 2013, ch. 183, § 2, effective July 1, 2013.

History.
1963, ch. 13, § 104, p. 27; am. 1977, ch. 164, § 1, p. 425.

33-1109. Signature and recording of bonds. — Each bond shall be signed by the chairman of the board of trustees and countersigned by the clerk; and the seal of the district, if it has a seal, shall be attached.

All bonds shall be recorded by the treasurer of the district who shall keep record of the number, amount and status of the issue, together with the name of the successful purchaser therefor.

History.
1963, ch. 13, § 105, p. 27; am. 2013, ch. 183, § 3, p. 437.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 183, deleted the former second sentence in the first paragraph which read: "The attached coupons shall be signed by the clerk, personally or by facsimile" and substituted "purchaser" for "bidder" near the end of the second paragraph.

33-1111. Sale of bonds. — School bonds may be sold at private sale, as provided in section 57-232, Idaho Code, after notice as hereinafter provided, or may be sold at public sale as hereinafter provided.

Notice of the intention to sell such bonds at public or private sale shall be published once in the name of the issuer in a newspaper of general circulation within the issuer's boundaries at least three (3) days prior to the time scheduled by the issuer for approving the sale of such bonds. Failure to comply with this requirement shall not invalidate the sale of the bonds, so long as the issuer has made a good faith effort to comply.

If the bonds are sold at public sale, the notice shall describe the issue of bonds; shall state that the board of trustees will receive sealed bids or

electronic bids pursuant to the provisions of section 57-233, Idaho Code, until a specified day and hour; and that said bids will be accepted or rejected at a regular or special meeting of the board at a time and place to be named in the notice. Said notice may require such deposits of forfeits as the board may deem necessary.

At the meeting held at the time and place named in the notice, the board of trustees shall open the bids, and may sell the same to whomever shall make the bid most advantageous to the school district, and the deposits of the unsuccessful bidders shall thereupon be returned to them. Should the successful bidder fail or refuse to tender payment of the amount required for the purchase of the issue within ten (10) days after tender to him of the executed bonds and a certified copy of the bond proceedings, his deposit shall be forfeited; and the board may in its judgment accept the bid next most advantageous, readvertise the issue as before, or sell the bonds at private sale.

The board of trustees may reject any or all bids, and sell the bonds at private sale when this is found to be in the best interest of the district.

History.
1963, ch. 13, § 107, p. 27; am. 1969, ch. 466, § 3, p. 1326; am. 1977, ch. 164, § 3, p. 425; am. 1987, ch. 51, § 1, p. 84; am. 2001, ch. 336, § 2, p. 1194; am. 2013, ch. 183, § 4, p. 437.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 183, combined former paragraphs two and three, combining public and private sales; in the current third paragraph, deleted "The notice shall be published once in a newspaper published in this state, at least one (1) week prior to the day bids are opened", inserted "If the bonds are sold at public sale" and "or electronic bids pursuant to the provisions of section 57-233, Idaho Code," and substituted "accepted or rejected" for "opened"; and deleted the former last paragraph, which read: "No school bond shall at any time be sold at less than its par value."

33-1116. Refunding bonds. [Repealed.]

Repealed by S.L. 2013, ch. 183, § 5, effective July 1, 2013.

History.
1963, ch. 13, § 112, p. 27.

33-1117. Call or redemption of bonds — Notice. — The board of trustees of any school district having outstanding bonds which are redeemable or callable before final maturity, having sufficient money in its bond interest and redemption fund may redeem one (1) or more bonds, on any callable or redeemable date. Notice of redemption shall be given in the manner specified in the bonds or the resolution authorizing the bonds.

History.
1963, ch. 13, § 113, p. 27; am. 1969, ch. 466, § 4, p. 1326; am. 2013, ch. 183, § 6, p. 437.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 183, substituted the current last sentence for the former four sentences which detailed specific instructions for giving notice.

33-1121. Refunding bonds and advance refunding bonds. — The board of trustees of any school district may issue negotiable bonds for the purpose of refunding any outstanding bonded indebtedness of the district pursuant to the provisions of chapter 5, title 57, Idaho Code, subject to the following additional provisions:

(1) The provisions of section 33-1107, 33-1109, 33-1111, 33-1115, 33-1117, 33-1118 and 33-1120, Idaho Code, shall be applicable to refunding bonds.

(2) No election shall be required for the issuance of refunding bonds provided that the refunding bonds do not create an additional indebtedness. Additional indebtedness shall mean either that the term of the refunding bonds exceeds the term of the bonds to be refunded, except as provided in subsection (4) of this section; or that the total amount of principal and interest to be paid on the refunding bonds exceeds the total of principal and interest to be paid on the bonds to be refunded.

(3) In the case of refunding bonds issued in advance of the date of calling and redeeming such outstanding bonds, the net interest cost of the refunding bonds shall not exceed the net interest cost of the bonds to be refunded.

"Net interest cost" of a proposed issue of refunding bonds is defined as the total amount of interest to accrue on said refunding bonds from their date to their respective maturities, plus the total amount of premiums payable to the holders of said outstanding bonds as a condition to their redemption, less the amount of any premium above their par value at which said refunding bonds are being or have been sold. "Net interest cost" of an outstanding issue, or issues, to be refunded is defined as the total amount of interest which would accrue on said outstanding bonds from the date of the proposed refunding bonds to the respective maturity dates of said outstanding bonds to be refunded. In all cases the net interest cost shall be computed without regard to any option of redemption prior to the designated maturities.

(4) The maturity of the refunding bonds may not exceed the term of the outstanding bonds except in cases where an extension, not to exceed sixty (60) days and in the same fiscal year shall be needed to enable the refunding bonds to comply with the requirements of the Idaho school bond guaranty act and the provisions of section 33-5306, Idaho Code.

History.
1965, ch. 224, § 1, p. 512; am. 2005, ch. 392, § 1, p. 1317; am. 2013, ch. 183, § 7, p. 437.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 183, rewrote the section to the extent that a detailed comparison is impracticable.

33-1122. Application of other statutes. [Repealed.]

Repealed by S.L. 2013, ch. 183, § 8, effective July 1, 2013.

History.
1965, ch. 224, § 2, p. 512.

33-1123. Authorization. [Repealed.]

Repealed by S.L. 2013, ch. 183, § 9, effective July 1, 2013.

History.
1965, ch. 224, § 3, p. 512; am. 2005, ch. 392, § 2, p. 1317.

33-1124. Resolution not to be amended or repealed. [Repealed.]

Repealed by S.L. 2013, ch. 183, § 10, effective July 1, 2013.

History.
1965, ch. 224, § 4, p. 512.

33-1125. Application of bond proceeds — Limitations. [Repealed.]

Repealed by S.L. 2013, ch. 183, § 11, effective July 1, 2013.

History.
1965, ch. 224, § 5, p. 512.

CHAPTER 12

TEACHERS

SECTION.
33-1207A. Teacher preparation.
33-1208. Revocation, suspension, denial, or place reasonable conditions on certificate — Grounds.
33-1209. Proceedings to revoke, suspend, deny or place reasonable conditions on a certificate — Letters of reprimand — Complaint — Subpoena power — Hearing.
33-1210. Information on past job performance.
33-1211. Privileged communication or publication.
33-1217. Accumulation of unused sick leave — Transfer — Sick leave when districts divide or consolidate.
33-1218. Sick leave in excess of statutory minimum amounts — Proof of illness.
33-1228. Severance allowance at retirement.
33-1271. School districts — Professional employees — Negotiation agreements.
33-1271A. Existing agreements. [Null and void.]
33-1272. Definitions.
33-1273. School districts — Professional employees — Negotiations.
33-1273A. Negotiations in open session.
33-1274. Appointment of mediators — Compensation.
33-1274A. Procedures upon agreement. [Null and void.]
33-1275. Terms of agreements. [Effective November 21, 2012 through June 30, 2014.]
33-1275. Fact-finders — Appointment — Hearings. [Effective July 1, 2014.]
33-1276. Intent of act.

33-1207A. Teacher preparation. — (1) Higher Education Institutions. The state board shall review teacher preparation programs at the institutions of higher education under its supervision and shall assure that

the course offerings and graduation requirements are consistent with the state board approved, research based "Idaho Comprehensive Literacy Plan." To ensure compliance with this requirement, the board may allocate funds, subject to appropriation, to the higher education institutions that have teacher preparation programs.

The higher education institutions shall be responsible for the preservice assessment measure for all kindergarten through grade twelve (12) teacher preparation programs. The assessment must include a demonstration of teaching skills and knowledge congruent with current research on best reading practices. Each institution shall report annually to the state board of education the number of preservice teachers who have passed the assessment. The state board of education shall then compile the statewide results and report to the legislature and the governor.

(2) For all Idaho teachers working on interim certificates, alternate routes or coming from out of state completion of a state approved reading instruction course shall be a one-time requirement for full certification.

(3) The board of trustees of every school district shall include in its plan for in-service training, coursework covering reading skills development, including diagnostic tools to review and adjust instruction continuously, and the ability to identify students who need special help in reading. The district plan for in-service training in reading skills shall be submitted to the state department of education for review and approval, in a format specified by the department.

History.
I.C., § 33-1207A, as added by 1999, ch. 362, § 1, p. 957; am. 2000, ch. 269, § 1, p. 769; am. 2002, ch. 71, § 1, p. 156; am. 2010, ch. 309, § 1, p. 828.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 309, rewrote the section, placing responsibility for teacher preparation programs in the institutions of higher education and providing for requirements relating to full certification of teachers from kindergarten through grade 12.

33-1208. Revocation, suspension, denial, or place reasonable conditions on certificate — Grounds. — 1. The professional standards commission may deny, revoke, suspend, or place reasonable conditions on any certificate issued or authorized under the provisions of section 33-1201, Idaho Code, upon any of the following grounds:

a. Gross neglect of duty;

b. Incompetency;

c. Breach of the teaching contract;

d. Making any material statement of fact in the application for a certificate, which the applicant knows to be false;

e. Revocation, suspension, denial or surrender of a certificate in another state for any reason constituting grounds for revocation in this state;

f. Conviction, finding of guilt, withheld judgment or suspended sentence, in this or any other state of a crime involving moral turpitude;

g. Conviction, finding of guilt, withheld judgment, or suspended sentence

in this state or any other state for the delivery, manufacture or production of controlled substances or simulated controlled substances as those terms are defined in section 37-2701, Idaho Code;

h. A guilty plea or a finding of guilt, notwithstanding the form of the judgment or withheld judgment in this or any other state, of the crime of involuntary manslaughter, section 18-4006 2. or section 18-4006 3., Idaho Code;

i. Any disqualification which would have been sufficient grounds for refusing to issue or authorize a certificate, if the disqualification existed or had been known at the time of its issuance or authorization;

j. Willful violation of any professional code or standard of ethics or conduct, adopted by the state board of education;

k. The kidnapping of a child, section 18-4503, Idaho Code;

l. Conviction, finding of guilt, withheld judgment, or suspended sentence, in this state or any other state of any felony, the commission of which renders the certificated person unfit to teach or otherwise perform the duties of the certificated person's position.

2. The professional standards commission shall permanently revoke any certificate issued or authorized under the provisions of section 33-1201, Idaho Code, and shall deny the application for issuance of a certificate of a person who pleads guilty to or is found guilty of, notwithstanding the form of the judgment or withheld judgment, any of the following felony offenses against a child:

a. The aggravated assault of a child, section 18-905, Idaho Code, or the assault with intent to commit a serious felony against a child, section 18-909, Idaho Code.

b. The aggravated battery of a child, section 18-907, Idaho Code, or the battery with intent to commit a serious felony against a child, section 18-911, Idaho Code.

c. The injury or death of a child, section 18-1501, Idaho Code.

d. The sexual abuse of a child under sixteen (16) years of age, section 18-1506, Idaho Code.

e. The ritualized abuse of a child under eighteen (18) years of age, section 18-1506A, Idaho Code.

f. The sexual exploitation of a child, section 18-1507, Idaho Code.

g. Lewd conduct with a child under the age of sixteen (16) years, section 18-1508, Idaho Code.

h. The sexual battery of a minor child sixteen (16) or seventeen (17) years of age, section 18-1508A, Idaho Code.

i. The sale or barter of a child for adoption or other purposes, section 18-1511, Idaho Code.

j. The murder of a child, section 18-4003, Idaho Code, or the voluntary manslaughter of a child, section 18-4006 1., Idaho Code.

k. The kidnapping of a child, section 18-4502, Idaho Code.

l. The importation or exportation of a juvenile for immoral purposes, section 18-5601, Idaho Code.

m. The abduction of a person under eighteen (18) years of age for prostitution, section 18-5610, Idaho Code.

n. The rape of a child, section 18-6101 or 18-6108, Idaho Code.

The general classes of felonies listed in subsection 2. of this section shall include equivalent laws of federal or other state jurisdictions. For the purpose of this subsection, "child" means a minor or juvenile as defined by the applicable state or federal law.

3. The professional standards commission may investigate and follow the procedures set forth in section 33-1209, Idaho Code, for any allegation of inappropriate conduct as defined in this section, by a holder of a certificate whether or not the holder has surrendered his certificate without a hearing or failed to renew his certificate. In those cases where the holder of a certificate has surrendered or failed to renew his certificate and it was found that inappropriate conduct occurred, the commission shall record such findings in the permanent record of the individual and shall deny the issuance of a teaching certificate.

4. Any person whose certificate may be or has been revoked, suspended or denied under the provisions of this section shall be afforded a hearing according to the provisions of section 33-1209, Idaho Code.

5. The professional standards commission may deny the issuance of a certificate for any reason that would be a ground for revocation or suspension.

History.

1963, ch. 13, § 150, p. 27; am. 1969, ch. 258, § 9, p. 794; am. 1978, ch. 180, § 1, p. 411; am. 1984, ch. 150, § 1, p. 353; am. 1987, ch. 229, § 1, p. 485; am. 1992, ch. 223, § 1, p. 672; am. 1993, ch. 111, § 1, p. 281; am. 2004, ch. 222, § 1, p. 662; am. 2011, ch. 246, § 1, p. 662; am. 2012, ch. 269, § 7, p. 751.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 246, throughout the section, substituted "professional standards commission" or "commission" for "state board of education," or similar language.

The 2012 amendment, by ch. 269, in subsection (2), deleted former paragraph (g), which read, "Possession of photographic representations of sexual conduct involving a child, section 18-1507A, Idaho Code" and redesignated the subsequent paragraphs accordingly.

Compiler's Notes.

Section 18-5610, referred to in paragraph 2.m, was repealed by S.L. 1994, ch. 130, § 10.

33-1209. Proceedings to revoke, suspend, deny or place reasonable conditions on a certificate — Letters of reprimand — Complaint — Subpoena power — Hearing. — (1) The professional standards commission may conduct investigations on any signed allegation of unethical conduct of any teacher brought by:

(a) An individual with a substantial interest in the matter, except a student in an Idaho public school; or

(b) A local board of trustees.

The allegation shall state the specific ground or grounds for the allegation of unethical conduct that could lead to a possible revocation, suspension, placing reasonable conditions on the certificate, or issuance of a letter of reprimand. Upon receipt of a written and signed allegation of unethical conduct, the chief certification officer, in conjunction with the attorney general and the professional standards commission investigator, shall

conduct a review of the allegation using established guidelines to determine whether to remand the issue to the school district to be resolved locally or to open an investigation and forward the case to the professional standards commission. Within fourteen (14) days of the decision to forward the case, the chief certification officer shall notify the complainant and the teacher, in writing, that an investigation will be conducted and the teacher shall be afforded an opportunity to respond to the allegation verbally and in writing prior to the issuance of the complaint. The executive committee of the professional standards commission shall review the circumstances of the forwarded case at one (1) of the two (2) next regularly scheduled meetings, and determine whether probable cause exists to warrant the filing of a complaint and the requesting of a hearing.

(2) Proceedings to revoke or suspend any certificate issued under section 33-1201, Idaho Code, or to issue a letter of reprimand or place reasonable conditions on the certificate shall be commenced by a written complaint against the holder thereof. Such complaint shall be made by the chief certification officer stating the ground or grounds for issuing a letter of reprimand, placing reasonable conditions on the certificate, or for revocation or suspension and proposing that a letter of reprimand be issued, reasonable conditions be placed on the certificate, or the certificate be revoked or suspended. A copy of the complaint shall be served upon the certificate holder, either by personal service or by certified mail, within thirty (30) days of determination by the executive committee or such other time agreed to by the teacher and the chief certification officer.

(3) Not more than thirty (30) days after the date of service of any complaint, the person complained against may request, in writing, a hearing upon the complaint. Any such request shall be made and addressed to the state superintendent of public instruction; and if no request for hearing is made, the grounds for suspension, revocation, placing reasonable conditions on the certificate, or issuing a letter of reprimand stated in the complaint shall be deemed admitted. Upon a request for hearing, the chief certification officer shall give notice, in writing, to the person requesting the hearing, which notice shall state the time and place of the hearing and which shall occur not more than ninety (90) days from the request for hearing or such other time agreed to by the teacher and the chief certification officer. The time of such hearing shall not be less than five (5) days from the date of notice thereof. Any such hearing shall be informal and shall conform with chapter 52, title 67, Idaho Code. The hearing will be held within the school district in which any teacher complained of shall teach, or at such other place deemed most convenient for all parties.

(4) Any such hearing shall be conducted by three (3) or more panel members appointed by the chairman of the professional standards commission, a majority of whom shall hold a position of employment the same as the person complained against. One (1) of the panel members shall serve as the panel chair. The panel chair shall be selected by the chairman of the professional standards commission from a list of former members of the professional standards commission who shall be instructed in conducting administrative hearings. No commission member who participated in the

probable cause determination process in a given case shall serve on the hearing panel. All hearings shall be held with the object of ascertaining the truth. Any person complained against may appear in person and may be represented by legal counsel, and may produce, examine and cross-examine witnesses, and, if he chooses to do so, may submit for the consideration of the hearing panel a statement, in writing, in lieu of oral testimony, but any such statement shall be under oath and the affiant shall be subject to cross-examination.

(5) The state superintendent of public instruction, as authorized by the state board of education, has the power to issue subpoenas and compel the attendance of witnesses and compel the production of pertinent papers, books, documents, records, accounts and testimony. The state board or its authorized representative may, if a witness refuses to attend or testify or to produce any papers required by such subpoena, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that a due notice has been given of the time and place of attendance of the witnesses, or the production of the papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the board, or its representative, or has refused to answer questions propounded to him in the course of the proceedings, and ask for an order of the court compelling the witness to attend and testify and produce the papers before the board. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in the order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he has not attended and testified or produced the papers before the board or its representative. A copy of the order shall be served upon the witness. If it shall appear to the court that the subpoena was regularly issued by the board and regularly served, the court shall thereupon order that the witness appear before the board at the time and place fixed in the order and testify or produce the required papers. Upon failure to obey the order, the witness shall be dealt with for contempt of court. The subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the district courts of this state.

(6) Within twenty-one (21) days of the conclusion of any hearing dealing with the revocation, suspension, denial of a certificate, placing reasonable conditions on the certificate, or issuing a letter of reprimand, the hearing panel shall submit to the chief certification officer, to the person complained against and to the chief administrative officer of the public school employing the certificate holder, if any, a concise statement of the proceedings, a summary of the testimony, and any documentary evidence offered, together with the findings of fact and a decision. The hearing panel may determine to suspend or revoke the certificate, or the panel may order that reasonable conditions be placed on the certificate or a letter of reprimand be sent to the certificate holder, or if there are not sufficient grounds, the allegation against the certificate holder is dismissed and is so recorded.

(7) Within three (3) days of issuance, the hearing panel's decision shall be made a permanent part of the record of the certificate holder. Should the

final decision be to place reasonable conditions upon the certificate holder or a suspension or revocation of the teaching certificate, the professional standards commission must notify the employing public school of the hearing panel's decision and to provide notice that such may negatively impact upon the employment status of the certificated employee.

(8) The final decision of the hearing panel shall be subject to judicial review in accordance with the provisions of chapter 52, title 67, Idaho Code, in the district court of the county in which the holder of a revoked certificate has been last employed as a teacher.

(9) Whenever any certificate has been revoked, suspended or has had reasonable conditions placed upon it, or an application has been denied, the professional standards commission may, upon a clear showing that the cause constituting grounds for the listed actions no longer exists, issue a valid certificate. Provided however, that no certificate shall be issued to any person who has been convicted of any crime listed in subsection 2. of section 33-1208, Idaho Code.

(10) For any person certified in another state and applying for certification in Idaho, and for any person previously certified in this state who is applying for certification in the event their certification has lapsed or is seeking renewal of a current certification, the chief certification officer shall deny an application for a new certificate or for a renewal of a certificate, regardless of the jurisdiction where such certificate was issued, if there are any unsatisfied conditions on such current or previously issued certificate or if there is any form of pending investigation by a state agency concerning the applicant's teaching license or certificate. Provided however, the chief certification officer shall not automatically deny the application if such person authorized in writing that the chief certification officer and the professional standards commission shall have full access to the investigative files concerning the conditions on, or investigation concerning, such certificate in Idaho or any other state or province. Upon review of the information authorized for release by the applicant, the chief certification officer shall either grant or deny such application or, upon denial and upon written request made by the applicant within thirty (30) days of such denial, shall afford the applicant with the procedures set forth in subsections (3) through (9) of this section. If the applicant does not execute the written authorization discussed herein, reapplication may be made once all investigations have been completed and all conditions have been satisfied, resulting in a clear certificate from the issuing state or province.

(11) For the purposes of this section, the term "teacher" shall include any individual required to hold a certificate pursuant to section 33-1201, Idaho Code.

History.

I.C., § 33-1209, as added by 1989, ch. 122, § 2, p. 269; am. 1992, ch. 159, § 1, p. 514; am. 1993, ch. 216, § 16, p. 587; am. 1995, ch. 235, § 1, p. 794; am. 2004, ch. 221, § 1, p. 659; am. 2011, ch. 246, § 2, p. 662; am. 2012, ch. 210, § 1, p. 565.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 246, in the undesignated paragraph following paragraph (1)(b), added the second and third sentences and, in the last sentence, inserted "forwarded" and "at one (1) of the two (2) next regularly scheduled meetings"; in the last sentence in subsection (2), added "within thirty (30) days of determination by the executive committee or such other time agreed to by the teacher and the chief certification officer"; in the third sentence in subsection (3), added "and which shall occur not more than ninety (90) days from the request for hearing or such other time agreed to by the teacher and the chief certification officer"; in the first sentence in subsection (6), substituted "Within twenty-one (21) days of the conclusion" for "At the conclusion" and inserted "and to the person complained against"; rewrote subsection (7), which formerly read: "The hearing panel's decision shall be given to the person complained against and a copy of the panel's decision shall be made a permanent part of the record of the certificate holder"; in subsection (8), substituted "hearing panel" for "professional standards commission"; and added subsections (10) and (11).

The 2012 amendment, by ch. 210, in subsection (b), inserted "the allegation of unethical conduct that could lead to a possible" in the first sentence and substituted "unethical conduct" for "misconduct" near the beginning of the second sentence; inserted "and to the chief administrative officer of the public school employing the certificate holder, if any"; in the first sentence in subsection (6); and added the second sentence in subsection (7).

33-1210. Information on past job performance. — (1) As used in this section:

(a) "Applicant" means an applicant for employment in a certificated or noncertificated position who is currently or was previously employed by a school district.

(b) "Employer" means a school district employer.

(2) Before hiring an applicant, a school district shall request the applicant to sign a statement:

(a) Authorizing the applicant's current and past employers, including employers outside of the state of Idaho, to release to the hiring school district all information relating to the job performance and/or job related conduct, if any, of the applicant and making available to the hiring school district copies of all documents in the previous employer's personnel files established pursuant to sections 33-517 or 33-518, Idaho Code, or investigative or other files, regardless of whether or not the employee has received notice of the existence of such documentation due to a voluntary separation from employment or the employee's refusal to sign such documents, relating to the job performance by the applicant. Upon separation of employment, all documents from any other file, including an investigative file, shall be moved into the personnel file. The requirement to submit investigative files to the personnel file shall not be construed to be a waiver of the attorney client privilege. Names of any student, fellow employee or complainant, other than the employee's administrative supervisor or administrative author shall be redacted from investigative file documents prior to placement in the personnel file. The former employee shall be provided a copy of the documents and written notice of the inclusion of the information in the personnel file to the former employee's last known address. The former employee shall be permitted the opportunity to file a rebuttal to the new documents placed into the personnel file. If an ongoing personnel investigation was taking place, the contents of the district's investigative file shall be forwarded to the

professional standards commission when the district submits the report required pursuant to section 33-1208A, Idaho Code.

(b) Documentation related to the job performance or job related conduct of any employee/applicant is defined as and may be limited by the producing district to include: all annual evaluations, letters of reprimand, letters of direction, letters of commendation or award, disciplinary actions and documentation of disciplinary investigations, recommendations for probation, notices of probation, notices of removal from probation, recommendations for termination or nonrenewal, notices of termination or nonrenewal, notices from the professional standards commission of Idaho or any other such similar state agency of action taken against an individual's certificate and any rebuttal documentation filed by the employee relative to any of the above documents. Names of any student or fellow employee complainant, other than the employee's administrative evaluator or administrative author of communication to the employee, shall be redacted from such provided documentation.

(c) Releasing the applicant's current and past employers, and employees acting on behalf of that employer, from any liability for providing information described in paragraph (a) of this subsection, as provided in subsection (4) of this section.

(3) Before hiring an applicant, a school district shall request in writing, electronic or otherwise, the applicant's current and past public school employers, including out-of-state employers, to provide the information described in subsection (2)(a) of this section, if any. The request shall include a copy of the statement signed by the applicant under subsection (2) of this section.

(4) Not later than twenty (20) business days after receiving a request under subsection (3) of this section, a school district within Idaho shall provide the information requested and make available to the requesting school district copies of all documents in the applicant's personnel record relating to job performance. The school district, or an employee acting on behalf of the school district, who in good faith discloses information under this section either in writing, printed material, electronic material or orally is immune from civil liability for the disclosure. An employer is presumed to be acting in good faith at the time of the disclosure under this section unless the evidence establishes one (1) or more of the following: (a) that the employer knew the information disclosed was false or misleading; (b) that the employer disclosed the information with reckless disregard for the truth; or (c) that the disclosure was specifically prohibited by a state or federal statute.

(5) A hiring district shall request from the office of the superintendent of public instruction verification of certification status, any past or pending violations of the professional code of ethics, any detail as to any prior or pending conditions placed upon a certificate holder's certificate, any prior or pending revocation, suspension or the existence of any prior letters of reprimand and information relating to job performance as established by the provisions of subsection (11) of this section, if any, for applicants for certificated employment.

(6) A school district shall not hire an applicant who does not sign the statement described in subsection (2) of this section.

(7) School districts may employ applicants on a noncontracted provisional basis pursuant to the provisions of this section. Once the prior employer personnel performance materials have arrived for an individual provisionally hired, the district must review the documents within thirty (30) days of receipt. A standard certificated contract shall automatically be issued at the end of the thirty (30) day review period unless, prior to the expiration of the thirty (30) day period, the board articulates in writing the specific information received pursuant to subsection (2)(a) of this section, which justifies the decision not to issue a standard contract. The reason articulated in this decision must derive only from the documents received in the personnel file and cannot be based upon any event that has occurred during the status as a noncontracted provisional certified professional employee. Prior to issuing a standard certificated contract or prior to the decision not to issue a standard certificated contract, or upon the expiration of the thirty (30) day period, an individual employed as a noncontracted provisional certificated professional employee shall be provided with the same compensation and benefits as if the employee had been employed on a standard certificated contract. When requests are sent to out-of-state employers under subsection (3) of this section, an applicant who has signed the statement described in subsection (2) of this section shall not be prevented from gaining employment in Idaho public schools if the laws or policies of that other state prevent documents from being made available to Idaho school districts or if the out-of-state school district fails or refuses to cooperate with the request.

(a) If no documentation is going to be forthcoming from an out-of-state employer, the Idaho district may initially employ the applicant on a standard contract and not utilize the conditional basis employment.

(b) For new employees with no prior public school work experience or for applicants whose out-of-state former employers will not release documentation pursuant to this statute, the district board shall develop a policy to confirm prior work experience and check references.

(8) Information received pursuant to this section shall be used by a school district only for the purpose of evaluating an applicant's qualifications for employment in the position for which he or she has applied. Except as otherwise provided by law, a board member or employee of a school district shall not disclose the information to any person, other than the applicant, who is not directly involved in the process of evaluating the applicant's qualifications for employment. A person who violates the provisions of this subsection may be civilly liable for damages caused by such violation.

(9) Beginning September 1, 2011, the board or an official of a school district shall not enter into any resignation agreement, severance agreement, or any other contract or agreement that has the effect of suppressing information about negative job performance by a present or former employee or of expunging information about that performance or unethical conduct from any documents in the previous employer's personnel, investigative or other files relating to job performance by the applicant. Any provision of a contract or agreement that is contrary to this subsection is

void and unenforceable. This subsection does not restrict the expungement from a personnel file of information about alleged verbal or physical abuse or sexual misconduct that has not been substantiated.

(10) This section does not prevent a school district from requesting or requiring an applicant to provide information other than that described in this section.

(11) By September 1, 2012, the state board of education has the authority to and shall adopt rules defining job standards performance and "verbal abuse," "physical abuse," "sexual misconduct" and "unethical conduct" as defined in the code of ethics for Idaho professional educators for application to all certificated and noncertificated employees. The definitions of job standards performance, verbal and physical abuse and sexual misconduct adopted by the state board of education must include the requirement that the school district has made a determination that there is sufficient information to conclude that the abuse or unethical conduct occurred and that the abuse or unethical conduct resulted in the employee's leaving his or her position at the school district.

History.
I.C., § 33-1210, as added by 2011, ch. 246, § 3, p. 662; am. 2012, ch. 210, § 2, p. 565.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 210, in subsection (2), rewrote paragraph (a), added paragraph (b), and redesignated former paragraph (b) as paragraph (c); inserted "public school" preceding "employers" in the first sentence in subsection (3); inserted "any detail as to any prior or pending conditions placed upon a certificate holder's certificate, any prior or pending revocation, suspension or the existence of any prior letters of reprimand" in subsection (5); rewrote subsection (7), adding paragraphs (a) and (b); substituted "any resignation agreement" for "collective bargaining agreement, individual employment contract, resignation agreement" in the first sentence in subsection (9); in subsection (11), substituted "September 1, 2011" for "September 12, 2012" at the beginning and inserted "and 'unethical conduct' as defined in the code of ethics for Idaho professional educators"; and substituted "unethical conduct" for "misconduct" three time in the section.

33-1211. Privileged communication or publication. — Any publication or communication made by any member of the state board of education, or by any person delegated by the said state board to hold or conduct any hearing, or by any certification officer of the state board of education, in the proper discharge of any official duty imposed under section 33-1208 or 33-1209, Idaho Code, shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

History.
1963, ch. 13, § 153, p. 27; am. 1990, ch. 213, § 29, p. 480; am. 2011, ch. 246, § 4, p. 662.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 246, deleted "or 33-1210" following "33-1209."

33-1217. Accumulation of unused sick leave — Transfer — Sick leave when districts divide or consolidate. — Unused sick leave shall be accumulated from year to year as long as an employee remains continuously in the service of the same school district, including charter districts, to ninety (90) days accumulation of leave. Termination of employment in any district shall terminate sick leave rights, both current and accumulated, except when such employee is employed by another district or another state educational agency during the school year immediately following the year of termination or within three (3) school years immediately following the year of termination if termination of employment is due to a reduction in force; and the accumulated leave up to a maximum of ninety (90) days shall be secured for, and credited to, the employee by the district or state educational agency thereafter employing such employee. Whenever new school districts are formed by the consolidation or by the division of existing districts, the accumulated sick leave of school district employees who continue in service in the new district or districts created by such consolidation or division shall have such accumulated sick leave secured for, and credited to, them in such newly created district, or districts.

History.
1963, ch. 13, § 158A, p. 27; am. 1965, ch. 148, § 1, p. 287; am. 1971, ch. 33, § 1, p. 77; am. 1974, ch. 112, § 2, p. 1278; am. 2012, ch. 105, § 1, p. 281.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 105, inserted "or within three (3) school years immediately following the year of termination if termination of employment is due to a reduction in force" in the second sentence.

33-1218. Sick leave in excess of statutory minimum amounts — Proof of illness. — The board of trustees may fix and establish for the district a period of annual sick leave and accumulation of sick leave in excess of the amounts provided herein, in sections 33-1216 and 33-1217, Idaho Code, not discriminatory between employees, and as in its discretion may appear necessary, and may require proof of illness in accordance with section 33-1216, Idaho Code.

History.
1963, ch. 13, § 158B, p. 27; am. 1974, ch. 112, § 4, p. 1278; am. 2011, ch. 49, § 1, p. 114.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 49, delete the former second paragraph, which read: "The state board of education may provide uniform regulations for proof of illness, including forms for submission of proof, and when so provided, its regulations shall supersede the regulations of the district in this regard."

33-1228. Severance allowance at retirement. — (1) Upon separation from public school employment by retirement in accordance with chapter 13, title 59, Idaho Code, an employee's unused sick leave shall be determined based on accumulated sick leave earned subsequent to July 1,

1976, as provided by section 33-1218, Idaho Code, and shall be reported by the employer to the Idaho public employee retirement system. A sum equal to one-half (1/2) of the monetary value of such unused sick leave, calculated at the rate of pay for such employee at the time of retirement, as determined by the retirement board, shall be transferred from the sick leave account provided by subsection (3) of this section and shall be credited to such employee's retirement account. Such sums shall be used by the retirement board to continue to pay, subject to applicable federal tax limits:

(a) Premiums for the retiree and the retiree's dependents at the rate for the active employee's group health, long-term care, vision, prescription drug and dental insurance programs as maintained by the employer for the active employees until the retiree and/or the retiree's spouse becomes eligible for medicare at which time the district shall make available a supplemental program to medicare for the eligible individual. Upon the death of the retiree the surviving spouse's health coverage shall be available and continued under the same terms and conditions as the retiree. Coverage may be continued for the retiree's surviving dependent spouse and dependents until remarriage of the spouse or until the retiree's surviving dependent spouse is eligible for a group health program by an employer. The medicare supplement program will provide the same premium and benefits for all retirees of all the employers served by the same insurance carrier. However, a school district may make available to all retirees from that district other benefits in addition to the medicare supplement program and the retiree or the district shall pay for such additional benefits.

(b) Premiums at the time of retirement for the retiree for the life insurance program maintained by the employer which may be reduced to a minimum of five thousand dollars ($5,000) of coverage.

(2) The retiree may continue to pay the premiums for the health, accident, dental and life insurance to the extent of the funds credited to the employee's account pursuant to this section and when these funds are expended the premiums may be deducted from the retiree's allowance. Upon a retiree's death, any unexpended sums remaining in the retiree's account shall revert to the sick leave account. If funds are not available for payment by the Idaho public employee retirement system from the retiree's surviving dependent spouse's allowance, the insurance carrier shall implement a direct billing procedure to permit the retiree's surviving spouse to continue coverage.

(3) Each employer shall contribute to a sick leave account maintained by the public employee retirement system in trust exclusively for the purpose of the provisions of this section. The retirement board shall serve as trustee of the trust and shall be indemnified to the same extent as provided in section 59-1305, Idaho Code. Assets in the trust shall not be assignable or subject to execution, garnishment or attachment or to the operation of any bankruptcy or insolvency law. The rate of such contribution each pay period shall consist of a percentage of employees' salaries as determined by the board, and such rate shall remain in effect until next determined by the board. Any excess balance in the sick leave account shall be invested, and

the earnings therefrom shall accrue to the sick leave account except the amount required by the board to defray administrative expenses. Assets of the trust may be commingled for investment purposes with other assets managed by the retirement board. All moneys payable to the sick leave account are hereby perpetually appropriated to the board, and shall not be included in its departmental budget.

(4) For purposes of this section public school employment shall be defined to include the employees of the Idaho digital learning academy, and to permit inclusion of employees of organizations funded by school districts or of contributions of employees of school districts and shall include employees of the Idaho bureau of educational services for the deaf and the blind.

History.

I.C., § 33-1228, as added by 1978, ch. 159, § 1, p. 347; am. 1982, ch. 206, § 1, p. 569; am. 1988, ch. 254, § 1, p. 493; am. 1990, ch. 407, § 1, p. 1133; am. 1993, ch. 398, § 1, p. 1461; am. 2006, ch. 150, § 1, p. 463; am. 2007, ch. 78, § 1, p. 205; am. 2009, ch. 55, § 1, p. 156; am. 2009, ch. 168, § 3, p. 502.

STATUTORY NOTES

Amendments.

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 55, updated the internal reference in the introductory paragraph in subsection (1) and inserted "to include the employees of the Idaho digital learning academy" in subsection (4).

The 2009 amendment, by ch. 168, updated an internal reference in the second sentence in subsection (1) and added "and and shall include employees of the Idaho bureau of educational services for the deaf and the blind" in subsection (4).

Effective Dates.

Section 4 of S.L. 2009, ch. 55 declared an emergency retroactively to July 1, 2008. Approved March 25, 2009.

33-1271. School districts — Professional employees — Negotiation agreements. — The board of trustees of each school district, including specially chartered districts, or the designated representative(s) of such district, is hereby empowered to and shall, upon its own initiative or upon the request of a local education organization representing a majority of the professional employees, enter into a negotiation agreement with the local education organization or the designated representative(s) of such organization.

(1) The parties to such negotiations shall negotiate in good faith on those matters specified in any such negotiation agreement between the local board of trustees and the local education organization.

(2) A request for negotiations may be initiated by either party to such negotiation agreement.

(3) Upon either party making a request for negotiations, the local education organization, upon board request, shall provide to the district written evidence establishing that the local education organization represents fifty percent (50%) plus one (1) of the professional employees for negotiations. If requested by the board, the local education organization shall establish this representative status on an annual basis, prior to the commencement of negotiations.

(4) Accurate records or minutes of the proceedings shall be kept and shall

be available for public inspection at the office of the affected school district during normal business hours.

(5) Joint ratification of all final offers of settlement shall be made in open meetings. Each party must provide written evidence confirming to the other that majority ratification has occurred.

History.

1971, ch. 103, § 1, p. 223; am. 1977, ch. 309, § 1, p. 882; am. 1989, ch. 294, § 1, p. 722; am. 2011, ch. 40, § 1, p. 9; am. 2013, ch. 330, § 1, p. 862.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 40, substituted "office of the affected school district" for "offices of the board of education" in present subsection (1).

The 2013 amendment, by ch. 330, divided the section into paragraphs and added the subsection designations; in the introductory paragraph, inserted "a majority of the" near the middle; inserted "The parties to such negotiations shall negotiate in" at the beginning of subsection (1); added subsection (3); and added the last sentence of subsection (5).

Compiler's Notes.

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2012, ch. 265, became null and void, and this section returned to its pre-2011 provisions, as amended by S.L. 2011, ch. 40, prior to its 2013 amendment.

Effective Dates.

Section 5 of S.L. 2013, ch. 330 declared an emergency. Approved April 11, 2013.

33-1271A. Existing agreements. [Null and void.]

Null and void, pursuant to rejection of Proposition 1 on November 6, 2012.

History.

I.C., § 33-1271A, as added by 2011, ch. 96, § 16, p. 209.

STATUTORY NOTES

Compiler's Notes.

This section was enacted by S.L. 2011, ch. 96, effective March 17, 2011. Session Laws 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section became null and void.

33-1272. Definitions. — As used in this act:

(1) "Professional employee" means any certificated employee of a school district, including charter districts; provided however, that administrative personnel including superintendents, supervisors or principals are excluded from the professional employee group for the purposes of negotiations.

(2) "Local education organization" means any local district organization duly chosen and selected by fifty percent (50%) plus one (1) of the professional employees, excluding administrative personnel as addressed in this section, as their representative organization for negotiations under this act.

(3) "Negotiations" means publicly meeting and conferring in good faith by a local board of trustees and the authorized local education organization, or the respective designated representatives of both parties for the purpose of

reaching an agreement, upon matters and conditions subject to negotiations as specified in a negotiation agreement between said parties.

For the purposes of this section, "good faith" means honesty, fairness and lawfulness of purpose with the absence of any intent to defraud, act maliciously or take unfair advantage or the observance of reasonable standards of fair dealing.

History.

1971, ch. 103, § 2, p. 223; am. 1989, ch. 294, § 2, p. 722; am. 2013, ch. 155, § 1, p. 368; am. 2013, ch. 330, § 2, p. 862.

STATUTORY NOTES

Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 155, inserted "publicly" near the beginning of subsection (3).

The 2013 amendment, by ch. 330, deleted "Definition of terms" at the beginning of the introductory paragraph; in subsection (1), inserted "administrative personnel including" and substituted "for the purposes of negotiations" for "if a negotiation agreement between the board and local education organization so specifies"; in subsection (2), substituted "fifty percent (50%) plus one (1)" for "a majority" and inserted "excluding administrative personnel as addressed in this section"; and added the last sentence.

Compiler's Notes.

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendments by S.L. 2011, ch. 295 and S.L. 2012, ch. 265, became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

Effective Dates.

Section 3 of S.L. 2013, ch. 155 declared an emergency. Approved March 22, 2013.

Section 5 of S.L. 2013, ch. 330 declared an emergency. Approved April 11, 2013.

33-1273. School districts — Professional employees — Negotiations. — The local education organization shall be the exclusive representative for all professional employees in that district for purposes of negotiations pursuant to the provisions of this chapter. The individual or individuals selected to negotiate for the professional employees shall be a member of the organization designated to represent the professional employees and shall be a professional employee of the local school district. However, in the event a local board of trustees chooses to designate any individual(s) other than the superintendent or elected trustee(s) of the school district as its representative(s) for negotiations, the local educational organization is authorized to designate any individual(s) of its choosing to act as its representative(s) for negotiations. Negotiations pursuant to this chapter shall only occur between the respective designated representatives.

History.

1971, ch. 103, § 3, p. 223; am. 1989, ch. 294, § 3, p. 722; am. 2013, ch. 330, § 3, p. 862.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 330, inserted "pursuant to the provisions of this chapter" at the end of the first sentence; and substituted the present last sentence for the former last sentence, which read: "A local board of trustees or its designated representative(s) shall negotiate matters covered by a negotiations

agreement only with the local education organization or its designated representative(s)."

Compiler's Notes.

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2011, ch. 295, became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

Section 4 of S.L. 2013, ch. 330 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 5 of S.L. 2013, ch. 330 declared an emergency. Approved April 11, 2013.

33-1273A. Negotiations in open session. — (1) Any other provision of law notwithstanding, including any provisions to the contrary in section 67-2345, Idaho Code, all negotiations pursuant to this act shall be in open session and shall be open and available for the public to attend.

(2) All documentation exchanged between the parties during negotiations, including all offers, counteroffers and meeting minutes shall be subject to public writings disclosure laws.

(3) Any other provision of law notwithstanding, including any other provisions to the contrary in sections 33-402 and 67-2343, Idaho Code, the district shall post notice of all negotiation sessions at the earliest possible time practicable. This shall be done by the district immediately posting notice of the negotiation session on the front page of its district website. If time permits, the district shall also post notice within twenty-four (24) hours at its regular meeting physical posting locations.

History.

I.C., § 33-1273A, as added by 2013, ch. 155, § 2, p. 368.

STATUTORY NOTES

Prior Laws.

Former § 1273A, was enacted by S.L. 2011, ch. 96, effective March 17, 2011. Session Laws 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section became null and void.

Effective Dates.

Section 3 of S.L. 2013, ch. 155 declared an emergency. Approved March 22, 2013.

33-1274. Appointment of mediators — Compensation. — In the event the parties in negotiations are not able to come to an agreement upon items submitted for negotiations under a negotiations agreement between the parties, one or more mediators may be appointed. The issue or issues in dispute shall be submitted to mediation at the request of either party in an effort to induce the representatives of the board and the local education organization to resolve the conflict. The procedures for appointment of and compensation for the mediators shall be determined by both parties.

History.

1971, ch. 103, § 4, p. 223; am. 1989, ch. 294, § 4, p. 722.

STATUTORY NOTES

Compiler's Notes.
This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2011, ch. 295, became null and void, and this section returned to its pre-2011 provisions.

33-1274A. Procedures upon agreement. [Null and void.]

Null and void, pursuant to rejection of Proposition 1 on November 6, 2012.

History.
I.C., § 33-1274A, as added by 2011, ch. 96, § 21, p. 209; am. 2011, ch. 295, § 8, p. 821.

STATUTORY NOTES

Compiler's Notes.
This section was enacted by S.L. 2011, ch. 96, effective March 17, 2011. Session Laws 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section, and the amendment by S.L. 2011, ch. 295, became null and void.

33-1275. Terms of agreements. [Effective November 21, 2012 through June 30, 2014.] — (1) All agreements, by any name or title, entered into pursuant to the provisions of this act, shall have a one (1) year duration of July 1 through June 30 of the ensuing fiscal year. The parties shall not have the authority to enter into any agreement negotiated under the provisions of this act that has any term that allows for such agreement or any provision of such agreement to be in any force or effect for multiple years or indefinitely, or otherwise does not expire on its own terms on or before June 30 of the ensuing fiscal year.

(2) Notwithstanding the provisions of subsection (1) of this section, upon mutual ratification, any item other than compensation and benefits as defined in subsection (3) of this section of any agreement entered into pursuant to this act may have a nonrolling two (2) year duration with a designated start date and end date. A second year term for any item not defined in subsection (3) of this section cannot be added, automatically or by mutual consent, back into the agreement after the expiration of the first year but rather may be addressed by the parties at the expiration of the end date of the two (2) year term.

(3) For purposes of this section, "compensation" means salary and benefits for professional employees. "Benefits" means employee insurance, leave time and sick leave benefits.

History.
1971, ch. 103, § 5, p. 223; am. 2013, ch. 329, § 1, p. 860.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 329, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

For this section as effective July 1, 2014, see the following section, also numbered § 33-1275.

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2011, ch. 295, became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

Section 3 of S.L. 2013, ch. 329 provided: "The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2014."

Effective Dates.

Section 3 of S.L. 2013, ch. 329 declared an emergency and made this section retroactive to November 21, 2012. Approved April 11, 2013.

33-1275. Fact-finders — Appointment — Hearings. [Effective July 1, 2014.] — (1) If mediation fails to bring agreement on all negotiable issues, the issues which remain in dispute may be submitted to fact-finding by request of either party. One (1) or more fact-finders shall be appointed by the parties by mutual agreement. If such agreement cannot be reached within thirty (30) days of the request for such appointment, the state superintendent of public instruction shall make such appointment. The fact-finder shall have authority to establish procedural rules, conduct investigations and hold hearings during which each party to the dispute shall be given an opportunity to present its case with supporting evidence.

(2) Within thirty (30) days following designation of the fact-finder, he shall submit a report in writing to the respective representatives of the board and the professional employees, setting forth findings of fact and recommendations on the issues submitted.

History.

I.C., § 33-1275, as added by 2013, ch. 329, § 2, p. 860.

STATUTORY NOTES

Compiler's Notes.

For this section as effective until July 1, 2014, see the preceding section, also numbered § 33-1275.

Effective Dates.

Section 3 of S.L. 2013, ch. 329 provided: "The provisions of Section 2 of this act shall be in full force and effect on and after July 1, 2014.

33-1276. Intent of act. — Nothing contained herein is intended to or shall conflict with, or abrogate the powers or duties and responsibilities vested in the legislature, state board of education, and the board of trustees of school districts by the laws of the state of Idaho. Each school district board of trustees is entitled, without negotiation or reference to any negotiated agreement, to take action that may be necessary to carry out its responsibility due to situations of emergency or acts of God.

History.

1971, ch. 103, § 6, p. 223.

STATUTORY NOTES

Compiler's Notes.
This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions.

CHAPTER 13

EDUCATIONAL INTERPRETERS

SECTION.
33-1303. Definitions.
33-1304. Qualification of educational interpreters.

33-1303. Definitions. — The following words and phrases used in this chapter are defined as follows:

(1) "Board" means the state board of education.

(2) "Bureau" means the Idaho bureau of educational services for the deaf and the blind.

(3) "Deaf" means a person who is not able to process information aurally and whose primary means of communication is visual.

(4) "Deaf-blind" means a person who is deaf or hard of hearing and who also has significant visual impairment or is legally blind.

(5) "Educational interpreter" means a person employed in the Idaho public schools, kindergarten through grade twelve (12), to provide interpreting services to students who are deaf, hard of hearing or deaf-blind.

(6) "Educational interpreter performance assessment" means a statistically valid and reliable assessment tool administered by the boys town national research hospital or its successor organization.

(7) "Hard of hearing" means a person who has a hearing deficit, who is able to process information aurally with or without the use of a hearing aid or other device that enhances the ability of the person to hear, and whose primary means of communication may be visual.

(8) "Interpreter education program" means a postsecondary degree program of at least two (2) years in duration that is accredited by the state board of education or an equivalent program accredited by another state, district or territory or by a professional accreditation body.

(9) "Interpreting" means the process of providing accessible communication between and among persons who are deaf, hard of hearing or deaf-blind, and those who are hearing. The process includes, but is not limited to, communication between American sign language or other form of manual communication and English. The process may also involve various other modalities that involve visual, gestural and tactile methods.

History.
I.C., § 33-1303, as added by 2006, ch. 173, § 1, p. 531; am. 2010, ch. 191, § 1, p. 405.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 191, added subsection (2) and redesignated the subsequent subsections accordingly.

33-1304. Qualification of educational interpreters. — (1) Except as provided in this section, no person shall act as an educational interpreter in an Idaho public school unless the person has been qualified to do so. The person shall be qualified if the person:

(a) Has achieved a score of 3.5 or higher on the educational interpreter performance assessment or has achieved a comparable score on an equivalent test as determined by the bureau; or

(b) Is currently certified by:

(i) The registry of interpreters for the deaf;

(ii) The national association of the deaf at a level of III or higher;

(iii) The registry of interpreters for the deaf, oral transliteration for oral transliterators; or

(iv) The testing, evaluation, and certification unit for cued language transliterators.

(2) An educational interpreter currently employed in an Idaho public school may continue in the practice of educational interpreting without meeting the requirements of subsection (1) of this section, provided that such requirements are met on or before June 30, 2009.

(3) Effective July 1, 2009, newly-hired educational interpreters, who have not worked in an Idaho public school as an educational interpreter in kindergarten through grade twelve (12) prior to the enactment of this chapter, may apply in writing to the bureau for emergency authorization to work as an educational interpreter for two (2) years before being required to meet the requirements of subsection (1) of this section. An educational interpreter who has received an emergency authorization under this subsection (3) may apply in writing to the bureau for a one-time, one (1) year extension of the emergency authorization. The bureau may grant such a one (1) year extension of the emergency authorization for good cause shown.

(4) A graduate of an interpreter education program may serve as an educational interpreter in Idaho public schools, kindergarten through grade twelve (12) before meeting the requirements of subsection (1) of this section for one (1) year following such graduation.

(5) Educational interpreters employed by an Idaho public school in kindergarten through grade twelve (12) must complete a minimum of eighty (80) hours of training in the areas of interpreting or transliterating every five (5) years. This training must be documented and may include home study coursework, seminars, workshops and mentoring programs.

(6) The board is authorized to promulgate rules necessary to implement this chapter.

History.
I.C., § 33-1304, as added by 2006, ch. 173, § 1, p. 531; am. 2010, ch. 191, § 2, p. 405.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 191, in paragraph (1)(a) and throughout subsection (3), substituted "bureau" for "board"; and in the next-to-last sentence in subsection (3), substituted "educational interpreter" for "education interpreter."

CHAPTER 14

TRANSFER OF PUPILS

SECTION.
33-1404. Districts to receive pupils.
SECTION.
33-1406. Bills of tuition.

33-1404. Districts to receive pupils. — Every school district shall receive and admit pupils transferred thereto, where payment of their tuition is to be paid by the home district, or waived by the receiving district, except when any such transfer would work a hardship on the receiving district. Each receiving school district shall be governed by written policy guidelines, adopted by the board of trustees, which define hardship impact upon the district or upon an individual school within the district. The policy shall provide specific standards for acceptance and rejection of applications for accepting out of district pupils. Standards may include the capacity of a program, class, grade level or school building. Standards may not include previous academic achievement, athletic or other extracurricular ability, disabling conditions, or proficiency in the English language.

Nonresident pupils who are placed by court order under provisions of the Idaho juvenile corrections or child protective acts and reside in licensed homes, agencies and institutions shall be received and admitted by the school district in which the facility is located without payment of tuition.

Homeless children and youth as defined by the McKinney-Vento homeless assistance act 42 U.S.C. section 11301 et seq., may attend any school district or school within a district without payment of tuition when it is determined to be in the best interest of that child.

History.

1963, ch. 13, § 75, p. 27; am. 1978, ch. 174, § 2, p. 398; am. 1983, ch. 85, § 2, p. 176; am. 1990, ch. 43, § 3, p. 67; am. 1990, ch. 272, § 1, p. 766; am. 2001, ch. 93, § 3, p. 232; am. 2004, ch. 23, § 6, p. 25; am. 2010, ch. 235, § 15, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, in the last sentence in the first paragraph, substituted "disabling conditions" for "handicapping conditions"; and in the last paragraph, substituted "defined by the McKinney-Vento homeless assistance act 42 U.S.C. section 11301 et seq." for "defined by the Stewart B. McKinney homeless assistance act (P.L. 100-77)."

33-1406. Bills of tuition. — Bills of tuition for nonresident pupils shall be rendered by each creditor district and for nonresident pupils attending any school of the creditor district under the provisions of section 33-1403 or 33-1404, Idaho Code, the bill of tuition shall be submitted to the home district of such pupils. In all other cases, the creditor district may submit to

the parent of any nonresident pupil attending school in its district a bill of tuition of such pupil, and such parent shall be liable for the payment of said tuition, if so billed. Tuition reimbursement for nonresident pupils who are placed by court order under provisions of the Idaho juvenile corrections or child protective acts may be obtained by the creditor district through procedures established in section 33-1002, Idaho Code, for nonresident tuition-equivalency allowance.

Each bill of tuition submitted to a home district shall show the serial number of the tuition certificate last issued to the creditor district by the state department of education and shall show also the number of pupils for whom tuition is charged, which charge shall be as shown by the said tuition certificate.

Bills of tuition, if submitted other than annually, shall be apportioned according to the number of school months for which any such bill is applicable. A fraction of a school month shall be deemed a school month.

History.
1963, ch. 13, § 77, p. 27; am. 1974, ch. 76, § 2, p. 1163; am. 1976, ch. 85, § 3, p. 290; am. 1983, ch. 85, § 3, p. 176; am. 1985, ch. 107, § 14, p. 191; am. 2004, ch. 23, § 7, p. 25; am. 2012, ch. 257, § 9, p. 709.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 257, deleted "or guardian" following "parent" twice in the second sentence in the first paragraph.

CHAPTER 15

TRANSPORTATION OF PUPILS

SECTION.
33-1510. Contracts for transportation service.

33-1510. Contracts for transportation service. — (1) All contracts entered into by boards of trustees for the transportation of pupils shall be in writing using the current pupil transportation model contract developed by the state department of education. School districts may attach to the model contract addenda to meet local requirements. School districts shall submit to the state superintendent of public instruction a copy of the pupil transportation contract prior to both parties signing it, for a review of legal requirements and appropriate costs and for final approval. The state superintendent of public instruction shall respond to the school district within twenty-one (21) calendar days of the postmarked receipt of the contract by notifying the school district of contract approval or of recommended or required changes. A school district may appeal to the state board of education any changes the state superintendent requires, in which case the state board may, upon review, approve the contract without such changes.

(2) No contract shall be executed covering a period of time exceeding five (5) years. School districts shall advertise, bid and contract for all bus transportation service routes at a single time, and contract with the lowest

responsible bidder or bidders meeting the specifications; provided that, one (1) time only, a school district may renew a contract with the current contractor if the board of trustees, after renegotiation with the contractor, determines that the terms are satisfactory to the district. The board of trustees may renew the contract for a term not to exceed five (5) years. Renewal of any contract pursuant to this section shall not be granted unless the provisions of this section were included, in a substantially conforming summary, within the bidding notice, published pursuant to section 33-601, Idaho Code, of the contract.

(3) Before entering into such contracts, the board of trustees shall invite bids by twice giving notice as provided in section 33-402(2), Idaho Code, and shall award the contract to the lowest responsible bidder.

History.

1963, ch. 13, § 88, p. 27; am. 1987, ch. 9, § 1, p. 13; am. 1989, ch. 3, § 1, p. 4; am. 1997, ch. 40, § 2, p. 74; am. 1997, ch. 176, § 1, p. 495; am. 2004, ch. 136, § 1, p. 462; am. 2004, ch. 254, § 1, p. 725; am. 2009, ch. 171, § 6, p. 541; am. 2009, ch. 341, § 49, p. 993; am. 2011, ch. 151, § 18, p. 414.

STATUTORY NOTES

Amendments.

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 171, updated the section reference in subsection (3).

The 2009 amendment, by ch. 341, updated the section reference in subsection (3).

The 2011 amendment, by ch. 151, updated the section reference in subsection (3).

Effective Dates.

Section 7 of S.L. 2009, ch. 171 declared an emergency. Approved April 15, 2009.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-1511. State board of education — Powers and duties related to transportation.

STATUTORY NOTES

Compiler's Notes.

The 14th National Congress on School Transportation was held in Warrensburg, Missouri, May 15-19, 2005. The congress produced the National School Transportation Specifications and Procedures (2005 Edition) which were revised at the 15th National Congress, which convened in Warrensburg, Missouri, May 16-19, 2010. See *http://www.ncstonline.org*.

CHAPTER 16

COURSES OF INSTRUCTION

SECTION.

33-1619. Virtual education programs.
33-1620. Mastery advancement program.
33-1621. Application to participate in program.
33-1622. Program assessment — Student assessment.
33-1623. Student advancement — Concurrent enrollment — Early graduation — Mastery advancement scholarship — Residual savings.
33-1624. Rules.
33-1625. Youth athletes — Concussion and head injury guidelines and requirements.
33-1626. Dual credit for early completers. [Effective April 11, 2013 through June 30, 2013.]

SECTION.
33-1626. Advance opportunities. [Effective July 1, 2013.]
33-1627. Online courses — Mobile computing devices and teacher training. [Null and void.]
33-1628. "8 in 6 program."

33-1619. Virtual education programs. — School districts may offer instruction in the manner described for a virtual school in section 33-5202A, Idaho Code. For programs meeting such definition, the school district may count and report the average daily attendance of the program's students in the manner prescribed in section 33-5208(10), Idaho Code. School districts may also offer instruction that is a blend of virtual and traditional instruction. For such blended programs, the school district may count and report the average daily attendance of the program's students in the manner prescribed in section 33-5208(10), Idaho Code. Alternatively, the school district may count and report the average daily attendance of the blended program's students in the same manner as provided for traditional programs of instruction, for the days or portions of days in which such students attend a physical public school. For the balance of days or portions of days, average daily attendance may be counted in the manner prescribed in section 33-5208(10), Idaho Code.

History.
I.C., § 33-1619, as added by 2009, ch. 340, § 2, p. 983; am. 2012, ch. 188, § 10, p. 495; am. 2013, ch. 342, § 4, p. 900.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 188, substituted "33-5208(8)" for "33-5208(8)(b)" three times in the section.
The 2013 amendment, by ch. 348, updated three references in this section in light of the 2013 amendment of § 33-5208.

Effective Dates.
Section 6 of S.L. 2009, ch. 340 provided that the act should take effect on and after July 1, 2009.

33-1620. Mastery advancement program. — There is hereby established the "Mastery Advancement Program," hereinafter referred to as "the program." This program shall permit students in Idaho public schools, including Idaho public charter schools, to successfully proceed through school curriculum at their own pace.

History.
I.C., § 33-1620, as added by 2010, ch. 275, § 2, p. 713; am. 2013, ch. 35, § 1, p. 76.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 35, deleted "Pilot" preceding "program" in the section heading; in the first sentence, deleted "a pilot project to be known as" following "hereby established" and "Pilot" preceding "Program"; and, in the second sentence, deleted "certain" preceding and following "students in."

Compiler's Notes.
Section 7 of S.L. 2010, ch. 275 provided "This act shall be null, void and of no force and effect on and after July 1, 2016." However, S.L. 2013, ch. 35, § 3 repealed S.L. 2010, ch. 275, § 7, effective July 1, 2013.

Legislative Intent.
Section 1 of S.L. 2010, ch. 275 provided

"Legislative Intent. It is the intent of the Legislature to provide a variety of avenues to help Idaho students succeed in school. The Legislature's duty to maintain a thorough system of public schools is only strengthened by employing new and innovative approaches to help ensure that more young people successfully complete grades 1-12 curriculum prepared for good-paying careers, postsecondary educational success or both. Idaho's economic future rests on the ability of an educated workforce to excel in today's complex and demanding workplace. To help ensure student success, the Legislature believes that a Pilot Program, a revenue neutral Pilot Program, designed to permit students to successfully complete school curriculum at their own accelerated pace, is warranted to study the efficacy of such an approach."

Compiler's Notes.

Section 2 of S.L. 2010, ch. 275 and section 1 of S.L. 2010, ch. 294 enacted sections designated as § 33-1620. The version of § 33-1620 enacted by S.L. 2010, ch. 294 has been redesignated by the compiler as § 33-1625. That redesignation was made permanent by S.L. 2011, ch. 151, § 19.

33-1621. Application to participate in program. — Any school district or public charter school wanting to participate in the mastery advancement program shall submit to the state department of education an application for participation in the program on a form established by the department. Any school district and any public charter school that submits a completed application shall be allowed to participate in the program.

History.

I.C., § 33-1621, as added by 2010, ch. 275, § 3, p. 713; am. 2011, ch. 81, § 1, p. 172; am. 2013, ch. 35, § 2, p. 76.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 81, deleted former subsection (2) and paragraphs (3)(a) and (3)(b), which read: "(2) The program shall be divided into three (3) geographical regions of the state in the following manner:

"(a) Region I shall be comprised of Idaho high school activities association regions I and II;

"(b) Region II shall be comprised of Idaho high school activities association region III; and

"(c) Region III shall be comprised of Idaho high school activities association regions IV, V and VI.

"(3) Participating school districts shall reflect the disparate sizes of school districts within this state. Participating school districts shall be selected in the following manner:

"(a) Any school district and any charter school desiring to participate in the program shall submit an application to the state department of education by September 1, 2010. Such application shall be developed by the state department of education and shall be made available to the state's school districts and charter schools by July 15, 2010. From the applicants, the department shall select:

"(i) Three (3) school districts, one (1) from each program region, that have grades 1-12 enrollment of more than seven thousand (7,000) students;

"(ii) Six (6) school districts, two (2) from each program region, that have grades 1-12 enrollment of between four thousand (4,000) and six thousand nine hundred ninety-nine (6,999) students;

"(iii) Six (6) school districts, two (2) from each program region, that have grades 1-12 enrollment of between one thousand (1,000) and three thousand nine hundred ninety-nine (3,999) students;

"(iv) Six (6) school districts, two (2) from each program region, that have grades 1-12 enrollment of less than one thousand (1,000) students; and

"(v) Three (3) charter schools, one (1) from each program region.

"(b) The state department of education shall notify selected program applicants by December 1, 2010";

and redesignated former paragraph (1) and subsection (4) as present subsections (2) and (3).

The 2013 amendment, by ch. 35, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

Section 7 of S.L. 2010, ch. 275 provided "This act shall be null, void and of no force and effect on and after July 1, 2016." However, S.L. 2013, ch. 35, § 3 repealed S.L. 2010, ch. 275, § 7, effective July 1, 2013.

Legislative Intent.

Section 1 of S.L. 2010, ch. 275 provided "Legislative Intent. It is the intent of the

Legislature to provide a variety of avenues to help Idaho students succeed in school. The Legislature's duty to maintain a thorough system of public schools is only strengthened by employing new and innovative approaches to help ensure that more young people successfully complete grades 1-12 curriculum prepared for good-paying careers, postsecondary educational success or both. Idaho's economic future rests on the ability of an educated workforce to excel in today's complex and demanding workplace. To help ensure student success, the Legislature believes that a Pilot Program, a revenue neutral Pilot Program, designed to permit students to successfully complete school curriculum at their own accelerated pace, is warranted to study the efficacy of such an approach."

33-1622. Program assessment — Student assessment. —

(1)(a) Every school district and charter school participating in the program shall measure student performance and achievement while such district and charter school is participating in the program. Such performance and achievement measures shall include, but shall not necessarily be limited to, standardized test scores, successful completion of courses, behavioral and/or disciplinary incidents and dropout rates. The performance and achievement measures provided for in this subsection shall be reported to the state department of education every June 30 during the life of the program.

(b) Relating to the program provided for in this act, the state department of education is hereby directed to identify and adopt end-of-course assessments for all core topic areas for grades 7-12 curriculum and appropriate benchmarks for grades 1-6. Such assessments shall be developed during the life of the pilot program.

(2)(a) Students may request to take an end-of-course assessment. Such request shall be made upon a form provided by the state department of education. The student's request shall be made pursuant to collaboration between the student, the student's teachers, the school administration and the student's parents or guardians.

(b) The student shall score no less than eighty-five percent (85%) on the end-of-course assessment in order to participate in self-directed study that allows the student to work on completing a class or year of school at an accelerated pace.

(c)(i) When a student enrolled in grades 7-12 successfully passes an end-of-course assessment as provided for in subsection (2)(b) of this section, the student shall be counted as having completed all required coursework for that course and the school may be funded for such student based upon either the actual hours of attendance or the course which such student has successfully passed, whichever is more advantageous to the school, up to the maximum of one (1) full-time equivalent student.

(ii) When a student enrolled in grades 1-6 successfully completes a benchmark as provided for in subsection (1)(b) of this section, then the student shall be counted as having completed all required coursework for that grade and the school may be funded for such student, based upon either the actual hours of attendance or the grade which such student has successfully passed, whichever is more advantageous to the school, up to the maximum of one (1) full-time equivalent student.

History.
I.C., § 33-1622, as added by 2010, ch. 275, § 4, p. 713.

STATUTORY NOTES

Legislative Intent.
Section 1 of S.L. 2010, ch. 275 provided "Legislative Intent. It is the intent of the Legislature to provide a variety of avenues to help Idaho students succeed in school. The Legislature's duty to maintain a thorough system of public schools is only strengthened by employing new and innovative approaches to help ensure that more young people successfully complete grades 1-12 curriculum prepared for good-paying careers, postsecondary educational success or both. Idaho's economic future rests on the ability of an educated workforce to excel in today's complex and demanding workplace. To help ensure student success, the Legislature believes that a Pilot Program, a revenue neutral Pilot Program, designed to permit students to successfully complete school curriculum at their own accelerated pace, is warranted to study the efficacy of such an approach."

Compiler's Notes.
Section 7 of S.L. 2010, ch. 275 provided "This act shall be null, void and of no force and effect on and after July 1, 2016." However, S.L. 2013, ch. 35, § 3 repealed S.L. 2010, ch. 275, § 7, effective July 1, 2013.

33-1623. Student advancement — Concurrent enrollment — Early graduation — Mastery advancement scholarship — Residual savings. — (1) Any student who successfully completes a school district's grades 1-12 curriculum at least one (1) year early shall be eligible for a mastery advancement scholarship if such student can show that the student has met all of the graduation requirements of the school district in which the student attends school; and

(a) The student has completed the grades 1-12 curriculum in eleven (11) or fewer years and such student has attended schools in the Idaho public school system for the entire grades 1-12 curriculum; or

(b) Where the student has attended Idaho public schools for less than the entire grades 1-12 curriculum, such student shall be eligible for a mastery advancement scholarship if such student has attended Idaho public schools for a minimum of four (4) years. For students who have attended Idaho public schools for less than four (4) years and who have completed all graduation requirements, such students may be eligible to receive a mastery advancement scholarship at a reduced rate not to exceed one (1) semester of scholarship for each year of Idaho public school attendance.

(2) A student is not required to graduate early and can choose to participate in concurrent enrollment or advanced placement classes as is the current practice.

(3)(a) If a student requests a mastery advancement scholarship and is eligible pursuant to the provisions of subsection (1)(a) and (1)(b) of this section, the student shall be entitled to a mastery advancement scholarship which may be used for tuition and fees at any publicly funded institution of higher education in Idaho. The amount of such scholarship shall equal thirty-five percent (35%) of the statewide average daily attendance-driven funding per enrolled pupil for each year of grades 1-12 curriculum the student avoids due to early graduation. Such school district or charter school shall receive an amount equal to each such scholarship.

(b) The state department of education shall annually report, no later than

January 15, to the senate and the house of representatives education committees, the number of scholarships awarded pursuant to this section during the previous school year, by school district and public charter school. Such report shall also include a fiscal note reflecting the amount of moneys expended for such scholarships.

(4) No student shall be eligible for more than three (3) years of a "mastery advancement" scholarship.

(5) School districts and public charter schools participating in the program established in section 33-1620, Idaho Code, are directed to collaborate with publicly funded institutions of higher education in this state to assist students who seek to graduate from high school early, in enrolling in postsecondary or advanced placement courses held in high school. Such school districts, public charter schools and publicly funded institutions of higher education shall report to the state board of education and the senate and the house of representatives education committees on any difficulties or obstacles they face in providing such assistance to students.

History.
I.C., § 33-1623, as added by 2010, ch. 275, § 5, p. 713.

STATUTORY NOTES

Legislative Intent.
Section 1 of S.L. 2010, ch. 275 provided "Legislative Intent. It is the intent of the Legislature to provide a variety of avenues to help Idaho students succeed in school. The Legislature's duty to maintain a thorough system of public schools is only strengthened by employing new and innovative approaches to help ensure that more young people successfully complete grades 1-12 curriculum prepared for good-paying careers, postsecondary educational success or both. Idaho's economic future rests on the ability of an educated workforce to excel in today's complex and demanding workplace. To help ensure student success, the Legislature believes that a Pilot Program, a revenue neutral Pilot Program, designed to permit students to successfully complete school curriculum at their own accelerated pace, is warranted to study the efficacy of such an approach."

Compiler's Notes.
Section 7 of S.L. 2010, ch. 275 provided "This act shall be null, void and of no force and effect on and after July 1, 2016." However, S.L. 2013, ch. 35, § 3 repealed S.L. 2010, ch. 275, § 7, effective July 1, 2013.

33-1624. Rules. — The state department of education is hereby directed to promulgate rules to implement the provisions of this act. Such rules may include a requirement that students successfully complete one (1) or more standardized assessments approved by the state department of education. The department shall work with school districts and public charter schools in developing the rules authorized by this section.

History.
I.C., § 33-1624, as added by 2010, ch. 275, § 6, p. 713.

STATUTORY NOTES

Legislative Intent.
Section 1 of S.L. 2010, ch. 275 provided "Legislative Intent. It is the intent of the Legislature to provide a variety of avenues to help Idaho students succeed in school. The Legislature's duty to maintain a thorough system of public schools is only strengthened by employing new and innovative approaches

to help ensure that more young people successfully complete grades 1-12 curriculum prepared for good-paying careers, postsecondary educational success or both. Idaho's economic future rests on the ability of an educated workforce to excel in today's complex and demanding workplace. To help ensure student success, the Legislature believes that a Pilot Program, a revenue neutral Pilot Program, designed to permit students to successfully complete school curriculum at their own accelerated pace, is warranted to study the efficacy of such an approach."

Compiler's Notes.

Section 7 of S.L. 2010, ch. 275 provided "This act shall be null, void and of no force and effect on and after July 1, 2016." However, S.L. 2013, ch. 35, § 3 repealed S.L. 2010, ch. 275, § 7, effective July 1, 2013.

33-1625. Youth athletes — Concussion and head injury guidelines and requirements. — (1) The state board of education and the Idaho high school activities association shall provide access to appropriate guidelines and information that identify the signs and symptoms of a concussion and head injury and describe the nature and risk of concussion and head injury in accordance with standards of the centers for disease control and prevention through a link on the internet website of the board and the Idaho high school activities association.

(2) This section shall apply to any middle school, junior high school and high school in the state participating in or administering an organized athletic league or sport. For the purposes of this section, "youth athlete" or "athlete" means an individual who is eighteen (18) years of age or younger and who is a participant in any middle school, junior high school or high school athletic league or sport.

(3) At the beginning of each sports season before a youth athlete participates in any organized practice or game, the youth athlete and the youth athlete's parent or guardian shall receive the guidelines and information described in subsection (1) of this section from the school for which the athlete plays, and shall review the guidelines and information. Coaches, referees, game officials, game judges and athletic trainers shall review such guidelines and information upon employment and biannually thereafter.

(4) If during a practice or game or competition, it is reasonably suspected that a youth athlete has sustained a concussion or head injury and exhibits outward signs or symptoms of such, as defined by the centers for disease control and prevention, then the youth athlete shall be removed from play. Every Idaho middle school, junior high school and high school that participates in or offers an organized athletic league shall develop protocol to be followed for removing such athletes from play. Such protocol shall be consistent with concussion and head injury guidelines of the centers for disease control and prevention.

(5) An athlete may be returned to play once the athlete is evaluated and authorized to return by a qualified health care professional who is trained in the evaluation and management of concussions. For the purposes of this section, "qualified health care professional" means and includes any one (1) of the following who is trained in the evaluation and management of concussions:

(a) A physician or physician assistant licensed under chapter 18, title 54, Idaho Code;

(b) An advanced practice nurse licensed under section 54-1409, Idaho Code; or

(c) A licensed health care professional trained in the evaluation and management of concussions who is supervised by a directing physician who is licensed under chapter 18, title 54, Idaho Code.

(6) If an individual reasonably acts in accordance with the protocol developed pursuant to subsection (4) of this section, then acting upon such protocol shall not form the basis of a claim for negligence in a civil action.

(7) Any youth sport organization or association in this state may comply with this section. If a youth sport organization or association is in full compliance with this section, then the youth sport organization or association shall be afforded the same protections from liability in a civil action pursuant to subsection (6) of this section.

History.
I.C., § 33-1625, as added by 2012, ch. 299, § 2, p. 820.

STATUTORY NOTES

Prior Laws.
Former § 33-1625, Legislative intent — Youth athletes — Concussion guidelines, which comprised I.C., § 33-1620, as added by 2010, ch. 294, § 1, p. 794; am. and redesig. 2011, ch. 151, § 19, p. 414, was repealed by S.L. 2012, ch. 299, § 1, effective July 1, 2012.

Compiler's Notes.
Section 2 of S.L. 2010, ch. 275 and section 1 of S.L. 2010, ch. 294 enacted sections designated as § 33-1620. The version of § 33-1620 enacted by S.L. 2010, ch. 294 was redesignated by the compiler as § 33-1625. That redesignation was made permanent by S.L. 2011, ch. 151, § 19.

33-1626. Dual credit for early completers. [Effective April 11, 2013 through June 30, 2013.] — Students completing all state high school graduation requirements at any time prior to the beginning of their final twelfth grade semester or trimester term, except the senior project and any other course that the state board of education requires to be completed during the final year of high school, beginning with the 2011-2012 school year, shall be eligible for up to eighteen (18) credits per semester term or twelve (12) credits per trimester term of postsecondary credits of dual credit courses. Average daily attendance shall be counted as normal for such students for public school funding purposes. In addition, the state department of education shall distribute funds from the moneys appropriated for the educational support program to defray the per credit cost charged for such dual credit courses by accredited postsecondary institutions. The amount so distributed shall not exceed seventy-five dollars ($75.00) per credit hour.

History.
I.C., § 33-1626, as added by 2013, ch. 340, § 7, p. 890.

STATUTORY NOTES

Prior Laws.
Former § 33-1626, which comprised I.C., § 33-1626, as added by 2011, ch. 247, § 14, p. 669; am. 2011, ch. 300, § 7, p. 857; am. 2012, ch. 266, § 2, p. 741, was enacted by S.L. 2011, ch. 247, effective April 8, 2011. Session Laws

2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section, and the amendments by S.L. 2011, ch. 300 and S.L. 2012, ch. 266, became null and void.

Legislative Intent.

Section 29 of S.L. 2013, ch. 326 provided: "It is legislative intent that the State Department of Education shall compile information concerning the numbers of students enrolling in dual credit courses according to the provisions of Section 33-1626, Idaho Code, whether coursework is successfully completed, and total expenditures for fiscal year 2014. As nearly as possible, the report shall contain information about enrollment of this student population in post-high school education. A report containing such information shall be posted on the website of the State Department of Education no later than December 31, 2014."

Compiler's Notes.

For this section as effective July 1, 2013, see the following section, also numbered § 33-1626.

Section 8 of S.L. 2013, ch. 340 provided "The provisions of this act shall be null, void and of no force and effect after June 30, 2013."

Effective Dates.

Section 8 of S.L. 2013, ch. 340 declared an emergency. Approved April 11, 2013.

33-1626. Advance opportunities. [Effective July 1, 2013.] — Students completing all state high school graduation requirements at any time prior to the beginning of their final twelfth grade semester or trimester term, except the senior project and any other course that the state board of education requires to be completed during the final year of high school, shall be eligible for the following:

(1) Dual credit courses, up to eighteen (18) credits per semester term or twelve (12) credits per trimester term of postsecondary credits. Average daily attendance shall be counted as normal for such students for public school funding purposes. The state department of education shall distribute funds from the moneys appropriated for the educational support program to defray the per credit cost charged for such dual credit courses by accredited postsecondary institutions. The amount so distributed shall not exceed seventy-five dollars ($75.00) per credit hour.

(2) End of course, college credit-bearing advanced placement examinations, up to six (6) examinations per semester or four (4) per trimester. The state department of education shall distribute funds from the moneys appropriated for the educational support program to defray the per examination cost charged. The amount so distributed shall not exceed ninety dollars ($90.00) per examination.

The state department of education shall reimburse school districts and public charter schools for such costs, up to the stated limits, within one hundred twenty-five (125) days of receiving the necessary data upon which reimbursements may be paid. If a student fails to earn credit for any course or examination for which the department has paid a reimbursement, the student must pay for and successfully earn credit for one (1) such course or examination before the department may pay any further reimbursements for such student.

History.

I.C., § 33-1626, as added by 2013, ch. 154, § 4, p. 360.

STATUTORY NOTES

Compiler's Notes.
For this section as effective until June 30, 2013, see the preceding section, also numbered § 33-1626.

33-1627. Online courses — Mobile computing devices and teacher training. [Null and void.]

Null and void, pursuant to rejection of Proposition 3 on November 6, 2012.

History.
I.C., § 33-1627, as added by 2011, ch. 247, § 15, p. 669; am. 2012, ch. 266, § 3, p. 741.

STATUTORY NOTES

Compiler's Notes.
This section was enacted by S.L. 2011, ch. 247, effective April 8, 2011. Session Laws 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section, and the amendment by S.L. 2012, ch. 266, became null and void.

33-1628. "8 in 6 program." — (1) A program is hereby established in the state department of education to be known as the "8 in 6 Program."

(2) If a parent and student agree, by signing the appropriate form provided by the state department of education, to the conditions provided for in paragraphs (a) and (b) of this subsection, the state department of education will pay for a portion of the cost of summer online courses and online overload courses as provided for in this section from the moneys appropriated for this purpose.

(a) The student and parent agree that the student shall take and successfully complete dual credit or professional-technical education courses for at least a portion of the student's courses during the eleventh and/or twelfth grade years. Funding for this requirement will not be provided by the "8 in 6 Program."

(b) The student and parent agree that the student shall take and successfully complete at least one (1) summer online or online overload course and a full course load of at least fourteen (14) credits per school year.

(c) The state shall pay two hundred twenty-five dollars ($225) per one (1) credit summer online course or one (1) credit online overload course taken in this program. Provided however, that moneys shall not be paid for Idaho digital learning academy (IDLA) enrollments funded pursuant to section 33-1626, Idaho Code.

(d) The state shall pay for no more than two (2) credits of online overload courses per student per school year. The state shall pay for no more than two (2) credits of summer online courses per student per summer. The state shall pay for no more than a combined total of four (4) credits of summer online or online overload courses per student per year. The state shall pay for no more than a combined total of eight (8) credits of summer online and online overload courses per student during such student's participation in the program.

(3) Participation in this program shall be limited to no more than ten percent (10%) of students in each grade 7 through 12. Such limitation shall be applied initially on a school district-by-school district, grade-by-grade basis. If any grades do not fully utilize their available participation slots, the school district shall reallocate said participation slots to those grades in which more than ten percent (10%) of the students have applied for participation in the program. If any school districts do not fully utilize their available participation slots by July 1, the state department of education shall reallocate said participation slots to those districts in which more than ten percent (10%) of the students have applied for participation in the program. Students accepted into the program shall remain in the program from year to year unless they sign a withdrawal form developed by the state department of education. If a participating student transfers from one (1) school district to another, such student shall remain enrolled in the program, the ten percent (10%) participation limitation of the student's new school district notwithstanding. The state department of education shall maintain a list of participants.

(a) If the number of students applying for participation in the "8 in 6 Program" exceeds the number of participation slots available in the school district, the school district shall establish participation preference criteria. Such criteria shall include students who have successfully completed at least one (1) online course prior to participating in the program, and may include any of the following:

(i) Grade point average;

(ii) State-mandated summative achievement test results;

(iii) Other school district administered student assessments.

(b) If a student participating in the program fails to complete with a grade of "C" or better one (1) or more summer online or online overload courses while in the program, the student must pay for and successfully complete a summer online or online overload course with a grade of "C" or better before continuing in the program.

(4) Procedures for participating in the "8 in 6 Program" include the following: The school district shall make reasonable efforts to ensure that any student who considers participating in the program considers the challenges and time necessary to succeed in the program. Such efforts by the district shall be performed prior to a student participating in the program.

(5) Eligible courses. To qualify as an eligible course for the program, the course must be one in which a majority of the instruction is provided electronically, and it must be offered by a provider accredited by the organization that accredits Idaho high schools or an organization whose accreditation of providers is recognized by the organization that accredits Idaho high schools. Dual credit, advanced placement and concurrent enrollment courses are not eligible under this program. Parents of participating students may enroll their child in any eligible course, with or without the permission of the school district in which the student is enrolled, up to the course enrollment limits provided for in subsection (2)(d) of this section. School district personnel shall assist parents in the process of enrolling students in such courses. Each participating student's transcript at the

school district at which the student is enrolled shall include the credits earned and grades received by the student for any online courses taken pursuant to this section.

(6) The state board of education is hereby authorized to promulgate rules to implement the provisions of this section.

(7) Definitions:

(a) "8 in 6 Program" means the two (2) years of junior high, the four (4) years of high school and the first two (2) years of college or professional-technical preparation that normally take eight (8) years to complete are compressed into six (6) years by taking full course loads during the school year and one (1) or two (2) online courses during the summer or as online overload courses.

(b) "Full course load" means no fewer than fourteen (14) credits per school year.

(c) "Overload course" means a course taken that is in excess of or more than the number of courses taken in the normal school day as a normal school day is defined for fractional average daily attendance purposes by the state department of education.

(d) "Parent" means parent or parents or guardian or guardians.

(e) "School district" means an Idaho school district or a public charter school that provides education to any grades 7-12.

(f) "School year" means the normal school year that begins upon the conclusion of the break between grades and ends upon the beginning of the same break of the following year.

History.

I.C., § 33-1628, as added by 2012, ch. 197, § 2, p. 529; am. 2013, ch. 154, § 5, p. 360.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 154, substituted "moneys shall not be paid for Idaho digital learning academy (IDLA) enrollments funded pursuant to section 33-1626, Idaho Code" for "if the Idaho digital learning academy (IDLA) receives a state guarantee or appropriation of at least five million dollars ($5,000,000) for fiscal year 2013, the state shall pay no moneys for the '8 in 6 Program' for that fiscal year, and IDLA shall provide the online courses necessary to meet the needs of the '8 in 6 Program' for that fiscal year, at a cost not to exceed seventy-five dollars ($75.00) per course" in paragraph (2)(c); and, in subsection (5), inserted "one in which a majority of the instruction is provided electronically, and it must be" in the first sentence and added the last three sentences.

Compiler's Notes.

Section 1 of S.L. 2012, ch. 197 provided: "Purpose of Act. The purpose of this program is to identify those students who are taking courses in grades 7 through 12 at an accelerated rate and provide them with an incentive to participate in dual credit for early completers pursuant to the provisions of Section 33-1626, Idaho Code. The program will provide funding so that a portion of the summer online courses and online overload courses taken by such students will be paid for by the State Department of Education."

The abbreviation enclosed in parentheses so appeared in the law as enacted.

CHAPTER 20

EDUCATION OF EXCEPTIONAL CHILDREN

SECTION.
33-2001. Definitions.

33-2001. Definitions. — (1) "Ancillary personnel" means those persons who render special services to exceptional children in regular or in addition to regular or special class instruction as defined by the state board of education.

(2) "Children with disabilities" means those children with cognitive impairments, hearing impairments, deafness, speech or language impairments, visual impairments, blindness, deaf-blindness, serious emotional disturbance, orthopedic impairments, severe or multiple disabilities, autism, traumatic brain injury, developmental delay or specific learning disabilities, and who by reason of the qualifying disability require special education and related services.

(3) "Exceptional children" means both children with disabilities and gifted/talented children with regard to funding for school districts.

(4) "Gifted/talented children" means those students who are identified as possessing demonstrated or potential abilities that give evidence of high performing capabilities in intellectual, creative, specific academic or leadership areas, or ability in the performing or visual arts and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities.

(5) "Special education" or "special instructional service" means specially designed instruction or a related service, at no cost to the parents, to meet the unique needs of an exceptional child.

History.
I.C., § 2002A, as added by 1965, ch. 228, § 3, p. 542; am. 1974, ch. 127, § 1, p. 1305; am. and redesig. 1991, ch. 323, § 3, p. 839; am. 2010, ch. 235, § 16, p. 542.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 235, added subsection (2) and redesignated former subsection (2) as present subsection (3); and deleted former subsection (3), which was the definition for "'Children with disabilities'."

CHAPTER 21

JUNIOR COLLEGES

SECTION.
33-2101A. Junior college shall mean community college.
33-2105. Addition of territory to community college districts.
33-2106. Trustees of community college districts.
33-2109B. Sick leave transferred — Boise State University — College of Western Idaho. [Null and void.]
33-2111. Taxes and other financial support for community colleges.
33-2139. State community college account created.

SECTION.
33-2141. Disbursement of funds — Method — Funds disbursed not considered in fixing tuition.
SECTION.
33-2144. Disbursement to public employee retirement fund.

33-2101A. Junior college shall mean community college. — Notwithstanding any other provision of law, in sections 21-805, 21-806, 21-809, 23-404, 31-808, 33-101, 33-107, 33-107B, 33-601, 33-1252, 33-2101, 33-2102, 33-2103, 33-2104, 33-2105, 33-2106, 33-2107, 33-2107A, 33-2107B, 33-2107C, 33-2108, 33-2109A, 33-2110, 33-2110A, 33-2110B, 33-2111, 33-2112, 33-2113, 33-2114, 33-2115, 33-2116, 33-2117, 33-2118, 33-2119, 33-2121, 33-2122, 33-2123, 33-2124, 33-2125, 33-2126, 33-2130, 33-2135, 33-2137, 33-2138, 33-2139, 33-2141, 33-2142, 33-2143, 33-2144, 33-2211, 33-3716, 33-4001, 33-4003, 33-4004, 33-4006, 33-4201, 46-314, 50-1721, 57-1105A, 59-1324, 59-1371, 59-1374, 67-2320, 67-2322 and 67-5332, Idaho Code, the term "junior college" shall mean and shall be denoted as "community college."

History.

I.C., § 33-2101A, as added by 1987, ch. 94, § 1, p. 186; am. 1996, ch. 322, § 30, p. 1029; am. 1997, ch. 275, § 3, p. 813; am. 2000, ch. 285, § 20, p. 908; am. 2001, ch. 331, § 10, p. 1161; am. 2006, ch. 380, § 1, p. 1175; am. 2011, ch. 39, § 3, p. 94; am. 2013, ch. 72, § 10, p. 183.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 39, deleted "33-3717" following "33-3716."

The 2013 amendment, by ch. 72, deleted "33-4306, 33-4315" from the list of sections.

Effective Dates.

Section 4 of S.L. 2011, ch. 39 declared an emergency. Approved March 8, 2011.

Section 11 of S.L. 2013, ch. 72 provided: "Sections 5, 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 [this section] of this act shall be in full force and effect on and after July 1, 2013."

33-2105. Addition of territory to community college districts. — Any territory not in an existing community college district may become a part of a community college district by a vote of the school district electors resident of said territory, voting at an election called and held as herein provided.

A petition signed by not less than one hundred (100) school district electors of the territory proposed to be added to the community college district, or twenty percent (20%) of the school district electors within the territory, whichever is the lesser, describing the boundaries of the territory, and a true copy thereof, shall be filed with the board of trustees of the community college district. The board shall forward the original of said petition, with its recommendations, to the state board of education, and a copy thereof to the board of county commissioners of the home county of the community college district. The state board of education shall consider such petition, as it is required to consider a petition for the formation of a community college district. If it approve the petition, notice to that effect shall be given the board of trustees of the community college district and to

the board of county commissioners of the home county of the community college district.

When any such petition has been approved by the state board of education, an election shall be held in the manner of elections for the creation of a community college district, except that polling places shall be established only in the territory proposed to be added to the district. The question shall be deemed approved only if a majority of the votes cast in the territory were cast in favor of the proposal, and if this be the case, the territory shall be part of said community college district with all the force and effect as though said territory had been originally included in said community college district at the time of its original organization.

Notices to and by boards of county commissioners and to the state board of education shall be as provided in section 33-2104, Idaho Code. The state board of education shall notify the state liquor division that such territory has become a part of the community college district.

History.
1963, ch. 363, § 5, p. 1037; am. 2009, ch. 23, § 57, p. 53.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 23, throughout the section, substituted "community college district" for "junior college district" or similar language; and in the last paragraph, substituted "state liquor division" for "state liquor dispensary."

33-2106. Trustees of community college districts. — (1) The board of trustees of each community college district shall consist of five (5) school electors residing in the district who shall be appointed or elected as herein provided.

(a) Immediately following the establishment of a community college district, the state board of education shall appoint the members of the first board, who shall serve until the election and qualification of their successors.

(b) At the first election of trustees after the creation of a district, five (5) trustees shall be elected: two (2) for terms of two (2) years each, and three (3) for terms of four (4) years each. Thereafter the successors of persons so elected shall be elected for terms of four (4) years.

(c) Excluding any first election of trustees after the creation of a district, at any other election of trustees held in 2008, and in each trustee election thereafter, trustees shall be elected to terms of four (4) years. If more than two (2) trustee positions are eligible for election in 2008, one (1) trustee shall be elected to a term of four (4) years and two (2) trustees shall be elected to a term of six (6) years. Thereafter the successors of persons so elected in 2008 shall be elected for terms of four (4) years.

(d) The expiration of any term shall be at the regular meeting of the trustees next following the election for the successor terms.

(2) Elections of trustees of community college districts shall be biennially, in even-numbered years, and shall be held on a date authorized in section 34-106, Idaho Code. Vacancies on the board of trustees shall be filled by

appointment by the remaining members, but if by reason of vacancies there remain on the board less than a majority of the required number of members, appointment to fill such vacancies shall be made by the state board of education. Any person so appointed shall serve until the next trustee election, at which time his successor shall be elected for the unexpired term. The trustees shall take and subscribe the oath of office required in the case of state officers and said oath shall be filed with the secretary of state.

(3) Notice of the election, the conduct thereof, the qualification of electors and the canvass of returns shall be as prescribed in chapter 14, title 34, Idaho Code.

(4) The person or persons, equal in number to the number of trustees to be elected for regular or unexpired terms, receiving the largest number of votes shall be declared elected. An individual shall be a candidate for a specific position of the board and each candidate must declare which position he seeks on the board of trustees. If it be necessary to resolve a tie between two (2) or more persons, the board of trustees shall determine by lot which thereof shall be declared elected. The clerk of the board shall promptly notify any person by mail of his election, enclosing a form of oath to be subscribed by him as herein provided.

(5) When elections held pursuant to this section coincide with other elections held by the state of Idaho or any subdivision thereof, or any municipality or school district, the board of trustees may make agreement with the body holding such election for joint boards of election and the payment of fees and expenses of such boards of election on such proportionate basis as may be agreed upon.

(6) At its first meeting following the appointment of the first board of trustees, and at the first regular meeting following any community college trustee election, the board shall organize, and shall elect one (1) of its members chairman, one (1) a vice-chairman; and shall elect a secretary and a treasurer, who may be members of the board; or one (1) person to serve as secretary and treasurer, who may be a member of the board.

(7) The provisions of sections 67-6601 through 67-6616, Idaho Code, and sections 67-6623 through 67-6630, Idaho Code, are hereby made applicable to all community college trustee elections. Provided however, that the county clerk shall stand in place of the secretary of state and the county prosecutor shall stand in place of the attorney general. Any report or filing required to be filed by or for a candidate by such sections of Idaho Code shall be filed with the county clerk of the county where such candidate resides.

(8) The board shall set a given day of a given week in each month as its regular meeting time. Three (3) members of the board shall constitute a quorum for the transaction of official business.

(9) The authority of trustees of community college districts shall be limited in the manner prescribed in section 33-507, Idaho Code.

History.

1963, ch. 363, § 6, p. 1037; am. 1973, ch. 10, § 1, p. 22; am. 2007, ch. 92, § 1, p. 271; am. 2008, ch. 27, § 9, p. 50; am. 2011, ch. 145, § 1, p. 409.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 145, added subsection (7) and redesignated the subsequent subsections accordingly.

Compiler's Notes.
This section was amended by S.L. 2009, ch. 341, § 50, effective January 1, 2011. However, S.L. 2009, ch. 341, § 50 was repealed by S.L. 2010, ch. 185, § 3, effective January 1, 2011. Thus, the 2009 amendment will not be given effect.

33-2109B. Sick leave transferred — Boise State University — College of Western Idaho. [Null and void.]

Null and void, pursuant to Section 3 of S.L. 2009, ch. 22, effective September 2, 2009.

History.
I.C., § 33-2109B, as added by 2009, ch. 22, § 1, p. 52.

33-2111. Taxes and other financial support for community colleges. — For the maintenance and operation of each community college, in addition to the income from tuition paid by students as hereinbefore provided, the board of trustees may levy upon the taxable property within the district a tax not to exceed one hundred twenty-five thousandths percent (.125%) of the market value for assessment purposes on all taxable property within the district.

The tax levy determined by the board of trustees, within said limit, shall be certified to the board of county commissioners in each county in which the district may lie, not later than the second Monday in September of each year. No levy in excess of one hundred twenty-five thousandths percent (.125%) of the market value for assessment purposes on all taxable property within the district shall be made unless a supplemental levy in a specified amount be first authorized through an election held, as provided in title 34, Idaho Code, as if the community college district were a school district and approved by a majority of the district electors voting in such election.

History.
1963, ch. 363, § 11, p. 1037; am. 1979, ch. 291, § 1, p. 769; am. 1980, ch. 242, § 1, p. 561; am. 1982, ch. 255, § 8, p. 653; am. 1995, ch. 82, § 13, p. 218; am. 1996, ch. 322, § 32, p. 1029; am. 2007, ch. 129, § 1, p. 386; am. 2009, ch. 341, § 51, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, substituted "title 34, Idaho Code" for "sections 33-401 through 33-406, Idaho Code" in the last paragraph.

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-2139. State community college account created. — There is hereby created a state community college account in the state operating fund in the state treasurer's office to which shall be credited all moneys which may be transferred to that account pursuant to section 23-

404(1)(b)(iii), Idaho Code. The state treasurer shall make such disbursements from the account as may be ordered by the state liquor division in accordance with the provisions of this act.

History.
1967, ch. 350, § 1, p. 993; am. 1982, ch. 255, § 9, p. 653; am. 2012, ch. 35, § 1, p. 106.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 35, substituted "community college" for "junior college" in the section heading and near the beginning of the first sentence, substituted "transferred to that account pursuant to section 23-404(1)(b)(iii), Idaho Code" for "appropriated, apportioned, or allocated to that account" at the end of the first sentence, and substituted "liquor division" for "board of education" in the last sentence.

Compiler's Notes.
The term "this act" refers to S.L. 1967, ch. 350, which is codified as §§ 33-2139 and 33-2141 to 33-2143.

33-2141. Disbursement of funds — Method — Funds disbursed not considered in fixing tuition. — Funds transferred to the state community college account shall be disbursed quarterly to the qualifying community college districts. Funds disbursed under this act shall not be considered by the board of trustees of any community college in fixing tuition of such college pursuant to section 33-2110, Idaho Code.

History.
1967, ch. 350, § 4, p. 993; am. 1974, ch. 260, § 1, p. 1682; am. 1987, ch. 142, § 1, p. 283; am. 2012, ch. 35, § 2, p. 106.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 35, rewrote the section, which formerly read: "Funds appropriated to the state junior college account shall be disbursed to the qualifying junior college districts as follows: fifty percent (50%) of the moneys in the account shall be disbursed on the twentieth day of July of each year and the remainder of the account shall be disbursed on the first day of September of each year. Funds disbursed under this act shall not be considered by the board of trustees of any junior college in fixing tuition of such college pursuant to section 33-2110, Idaho Code."

Compiler's Notes.
The term "this act" refers to S.L. 1967, ch. 350, which is codified as §§ 33-2139 and 33-2141 to 33-2143.

33-2144. Disbursement to public employee retirement fund. — The disbursing of funds as provided by sections 33-2139 through 33-2143, Idaho Code, shall be subject to the payments required to be made by section 59-1324, Idaho Code, from the state community college account to the public employee retirement fund. Such payments shall be prior to the payment of funds from the state community college account to the several community college districts as provided by said statute.

History.
I.C., § 33-2144, as added by 1969, ch. 144, § 2, p. 466; am. 2013, ch. 187, § 4, p. 447.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 187, substituted "section 59-1324" for "section 59-1332B," substituted "community college account" for "junior college fund" twice, and substituted "community college districts" for "junior college districts."

CHAPTER 23

VOCATIONAL REHABILITATION — FEDERAL AID

SECTION.
33-2307. Terminating financial assistance for persons suffering from renal diseases — Legislative intent. [Repealed.]
33-2308. Termination of vocational rehabilitation program to provide treatment to persons suffering from chronic renal diseases. [Repealed.]

33-2307. Terminating financial assistance for persons suffering from renal diseases — Legislative intent. [Repealed.]

Repealed by S.L. 2012, ch. 264, § 3, effective July 1, 2013.

History.

1970, ch. 72, § 1, p. 186; am. 2012, ch. 264, § 1, p. 733.

33-2308. Termination of vocational rehabilitation program to provide treatment to persons suffering from chronic renal diseases. [Repealed.]

Repealed by S.L. 2012, ch. 264, § 4, effective July 1, 2013.

History.

1970, ch. 72, § 2, p. 186; am. 1999, ch. 329, § 18, p. 852; am. 2008, ch. 199, § 1, p. 644; am. 2012, ch. 264, § 2, p. 733.

CHAPTER 24

POSTSECONDARY AND PROPRIETARY SCHOOLS

SECTION.
33-2401. Definitions.
33-2402. Registration of postsecondary educational institutions.
33-2403. Registration of proprietary schools.
33-2404. Agent's permit.
33-2405. Purchase statement.
33-2406. Surety bond.
33-2407. Powers and duties of director.
33-2408. Remedies — Civil penalties.
33-2409. Criminal penalties.

33-2401. Definitions. — For the purposes of chapter 24, title 33, Idaho Code, the following words have the following meanings:

(1) "Accredited" means that a postsecondary educational institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the board.

(2) "Agent" means any individual within the state of Idaho who solicits students for or on behalf of a proprietary school.

(3) "Agent's certificate of identification" means a nontransferable written

document issued to an agent by the proprietary school that the agent represents.

(4) "Board" means the state board of education.

(5) "Course" means instruction imparted in a series of lessons or class meetings to meet an educational objective.

(6) "Course or courses of study" means either a single course or a set of related courses for which a student enrolls, either for academic credit or otherwise.

(7) "Degree" means any written or any academic title which contains, in any language, the word "associate," "bachelor," "baccalaureate," "master" or "doctor," or any abbreviation thereof, and which indicates or represents, or which is intended to indicate or represent, that the person named thereon, in the case of any writing, or the person it is awarded thereto, in the case of any academic title, is learned in or has satisfactorily completed a prescribed course of study in a particular field or that the person has demonstrated proficiency in any field of endeavor as a result of formal preparation or training.

(8) "Director" means the executive officer of the state board of education or his designee.

(9) "Person" means an individual, sole proprietorship, partnership, corporation or other association of individuals, however organized.

(10) "Postsecondary educational institution" means a person, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to operate, from a location within the state of Idaho, and which provides a course or courses of study that lead to a degree, or which provides, offers or sells degrees.

(11) "Proprietary school" means a person, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to operate, from a location within the state of Idaho and which conducts, provides, offers or sells a course or courses of study, but which does not provide, offer or sell degrees.

History.

I.C., § 33-2401, as added by 1993, ch. 57, § 3, p. 154; am. 1995, ch. 107, § 1, p. 340; am. 1999, ch. 329, § 32, p. 852; am. 2006, ch. 240, § 2, p. 725; am. 2009, ch. 26, § 2, p. 73; am. 2011, ch. 159, § 1, p. 447.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 26, rewrote subsections (3) and (7), changing the defined term in subsection (3) from "agent's permit"; and, in subsection (8), substituted "provides a course or courses of study that lead to a degree" for "provides courses or programs that lead to a degree."

The 2011 amendment, by ch. 159, added subsections (8) and (9) and redesignated the subsequent subsections accordingly.

33-2402. Registration of postsecondary educational institutions. — (1) Unless exempted as provided herein, each postsecondary educational institution which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually with and hold a valid certificate of registration

issued by the director. A public postsecondary educational institution or agency supported primarily by taxation from either the state of Idaho or a local source in Idaho shall not be required to register under this section. The director may exempt a nonprofit postsecondary educational institution from the registration requirement in accordance with standards and criteria established in rule by the board. The director may permit a postsecondary educational institution required to register under this section to instead register as a proprietary school under section 33-2403, Idaho Code, in accordance with standards and criteria established in rule by the board.

(2) The board shall prescribe by rule the procedure for registration, which shall include, but is not limited to, a description of each degree, course or courses of study, for academic credit or otherwise, that a postsecondary educational institution intends to conduct, provide, offer or sell. Such rule shall also prescribe the standards and criteria to be utilized by the director for recognition of accreditation organizations.

(3) The director may deny the registration of a postsecondary educational institution that does not meet accreditation requirements or other standards and criteria established in rule by the board. The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of registration under this section.

(4) The director shall assess an annual registration fee on each postsecondary educational institution required to be registered under this section as established in rule by the board. Such annual registration fee shall not exceed five thousand dollars ($5,000) and shall be collected by the director and shall be dedicated for use by the director in connection with his responsibilities under this chapter.

History.
I.C., § 33-2402, as added by 2006, ch. 240, § 4, p. 725; am. 2009, ch. 26, § 3, p. 73; am. 2011, ch. 159, § 2, p. 447.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 26, in subsection (2), substituted "courses of study" for "program" in the first sentence; and, in subsection (4), rewrote the first sentence, which formerly read: "The board shall assess an annual registration fee on each postsecondary educational institution required to be registered under this section based on the respective degrees, courses or programs that each such postsecondary educational institution intends to conduct, provide, offer or sell, not to exceed one hundred dollars ($100) for each degree, course or program" and inserted "not exceed five thousand dollars ($5,000) and shall" in the last sentence.

The 2011 amendment, by ch. 159, substituted "director" for "board" throughout the section.

33-2403. Registration of proprietary schools. — (1) Unless exempted as provided in subsection (4) of this section, each proprietary school which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually with and hold a valid certificate of registration issued by the director.

(2) The board shall prescribe by rule the procedure for registration, which shall include, but is not limited to, a description of each course or courses of

study, for academic credit or otherwise, that a proprietary school intends to conduct, provide, offer or sell.

(3) The director may deny the registration of a proprietary school that does not meet the standards or criteria established in rule by the board. The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of registration under this section.

(4) The following individuals or entities are specifically exempt from the registration provisions required by this section:

(a) An individual or entity that offers instruction or training solely avocational or recreational in nature, as determined by the board.

(b) An individual or entity that offers courses recognized by the board which comply in whole or in part with the compulsory education law.

(c) An individual or entity that offers a course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student.

(d) An individual or entity that conducts or engages in activities that would otherwise require registration under chapter 24, title 33, Idaho Code, if another state agency, commission or board regulates such activities pursuant to title 54, Idaho Code.

(e) An individual or entity that offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests, or similar instruction for test preparation.

(f) An individual or entity offering only workshops or seminars lasting no longer than three (3) calendar days and offered no more than four (4) times per year.

(g) A parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted.

(h) An individual or entity that offers postsecondary credit through a consortium of public and private colleges and universities under the auspices of the western governors.

(i) An individual that offers flight instruction and that accepts payment for services for such training on a per-flight basis after the training occurs, or that accepts advance payment or a deposit for such training in a de minimus amount, as established by the board in rule.

(5) The director shall assess an annual registration fee on each proprietary school required to be registered under this section as established in rule by the board. Such annual registration fee shall not exceed five thousand dollars ($5,000) and shall be collected by the director, and shall be dedicated for use by the director in connection with his responsibilities under this chapter.

History.

I.C., § 33-2403, as added by 2006, ch. 240, § 6, p. 725; am. 2009, ch. 26, § 4, p. 73; am. 2011, ch. 159, § 3, p. 447.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 26, in subsection (2), substituted "courses of study" for "program"; deleted former subsection (4)(e),

which read: "Aviation school or instructors approved by and under the supervision of the federal aviation administration" and made related redesignations; and, in subsection (5), added "as established by the board" in the first sentence, deleted the second sentence, which read: "Such annual registration fee shall be composed of a fixed portion in an amount not to exceed one hundred dollars ($100) for each proprietary school, and a variable portion based on the respective course or courses of study that each proprietary school intends to conduct, provide, offer or sell, not to exceed one hundred dollars ($100) for each course or courses of study," and inserted "not exceed five thousand dollars ($5,000) and shall" and "or its designee" in the last sentence.

The 2011 amendment, by ch. 159, at the end of subsection (1), substituted "director" for "board or its designee"; throughout subsections (3) and (5), substituted "director" for "board"; rewrote paragraph (4)(d), which formerly read: "An individual or entity which is otherwise regulated, licensed or registered with another state agency pursuant to title 54, Idaho Code"; in paragraph (4)(f), added "and offered no more than four (4) times per year"; added paragraph (4)(i); and, in subsection (5), substituted "collected by the director" for "collected by the board or its designee."

33-2404. Agent's permit. — (1) No individual may act as an agent of a proprietary school required to be registered under the provisions of this chapter unless that individual holds a valid agent's certificate of identification issued by the proprietary school that the agent represents.

(2) Each agent's certificate of identification shall be reissued annually by the proprietary school that the agent represents on the first day of July. If courses are solicited or sold by more than one (1) agent, a separate certificate of identification is required for each agent.

(3) The agent's certificate of identification shall consist of a pocket card and shall bear:

(a) The name and address of the agent;

(b) The name and address of the proprietary school that the agent represents;

(c) A statement that the bearer is an authorized agent of the proprietary school and may solicit students for the proprietary school.

(4) The agent shall surrender the agent's certificate of identification to the proprietary school upon termination of employment or agency relationship.

(5) An agent representing more than one (1) proprietary school shall obtain a separate agent's certificate of identification for each proprietary school represented.

(6) For every agent who will have unsupervised contact with minors, prior to issuing the agent a certificate of identification the proprietary school shall complete a criminal history check on the agent for particular criminal offenses, and in accordance with other guidelines, established in rule by the board. No agent shall be issued an agent's certificate of identification if he or she is found to have been convicted of any of the offenses identified in board rule, or if he or she has been previously found in any judicial or administrative proceeding to have violated this chapter.

(7) An agent's certificate of identification shall be valid for the state's fiscal year in which it is issued, unless sooner revoked or suspended.

(8) The agent shall carry the agent's certificate of identification with him or her for identification purposes when engaged in the solicitation of students away from the premises of the proprietary school and shall produce the agent's certificate of identification for inspection upon request.

(9) The issuance of an agent's certificate of identification pursuant to this section shall not be interpreted as, and it shall be unlawful for any individual holding any agent's certificate of identification to expressly or impliedly represent by any means whatsoever, that the board has made any evaluation, recognition, accreditation or endorsement of any proprietary school or of any course of study being offered by the agent of any such proprietary school. Any oral or written statement, advertisement or solicitation by any proprietary school or agent which refers to the board shall state:

"(Name of school) is registered with the State Board of Education in accordance with Section 33-2403, Idaho Code."

(10) It shall be unlawful for any agent holding an agent's certificate of identification under the provisions of this section to expressly or impliedly represent, by any means whatsoever, that the issuance of the agent's certificate of identification constitutes an assurance by the board that any course of study being offered by the agent or proprietary school will provide and require of the student a course of education or training necessary to reach a professional, educational, or vocational objective, or will result in employment or personal earning for the student, or that the board has made any evaluation, recognition, accreditation, or endorsement of any course of study being offered by the agent or proprietary school.

(11) No agent shall make any statements or engage in any practices that are false, deceptive or misleading.

(12) The proprietary school shall maintain records for five (5) years of each application for an agent's certificate of identification, and each issuance, denial, termination, suspension and revocation of an agent's certificate of identification.

(13) The proprietary school shall provide as part of the annual registration process the names and results of the criminal history check for each agent to whom it has issued a certificate of identification. The criminal history check will be valid for five (5) years.

(14) A student may bring an action pursuant to the Idaho rules of civil procedure for an agent's violation of the provisions of this chapter or any rule promulgated pursuant to this chapter, or any fraud or misrepresentation. The court shall determine which party is the "prevailing party" and the prevailing party shall be entitled to the recovery of damages, reasonable attorney's fees and costs both at trial and on appeal.

History.

I.C., § 33-2405, as added by 1993, ch. 57, § 3, p. 154; am. and redesig. 2006, ch. 240, § 8, p. 725; am. 2009, ch. 26, § 5, p. 73; am. 2011, ch. 159, § 4, p. 447.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 26, rewrote the section to the extent that a detailed comparison is impracticable.

The 2011 amendment, by ch. 159, rewrote subsection (11), which formerly read: "No agent shall make any untrue or misleading statement or engage in sales, collection, credit, or other practices of any type that are illegal, false, deceptive, misleading or unfair"; deleted "The board or" from the beginning of subsection (14); and deleted subsection (15),

which formerly read: "Any agent who violates the provisions of this section is also guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five thousand dollars ($5,000), or both."

33-2405. Purchase statement. — At the time of depositing any moneys to purchase the product of any proprietary school, the proprietary school shall require the student to execute the following statement on an appropriate form which shall be maintained on record by the proprietary school in the individual student's file:

"I understand that (Name of proprietary school) is registered with the State Board of Education in accordance with Section 33-2403, Idaho Code. I also understand that the State Board of Education has not accredited or endorsed any course of study being offered by (Name of proprietary school), and that these courses may not be accepted for transfer into any Idaho public postsecondary institution."

History.
I.C., § 33-2406, as added by 1993, ch. 57, § 3, p. 154; am. and redesig. 2006, ch. 240, § 9, p. 725; am. 2009, ch. 26, § 6, p. 73.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 26, substituted "may not be accepted" for "will not be accepted" in the last sentence of the statement.

33-2406. Surety bond. — As a condition of registration, a proprietary school shall obtain a surety bond or other financial instrument in a format approved by the director, issued by an insurer duly authorized to do business in this state in favor of the state of Idaho for the indemnification of any student for any loss suffered as a result of a failure by such proprietary school to satisfy its obligations pursuant to the terms and conditions of any contract for tuition or other instructional fees entered into between the proprietary school and a student, or as a result of any violation of the provisions of this chapter or the rules promulgated pursuant to this chapter. The term of the bond shall extend over the period of registration, and shall be in such amount as is established in rule by the board.

The director may submit a demand upon the surety on the bond on behalf of a student or students when it is reasonably believed that a loss has occurred due to a failure by such proprietary school to satisfy its obligations pursuant to the terms and conditions of any contract for tuition or other instructional fees entered into between the proprietary school and a student, or as a result of any violation of the provisions of this chapter or the rules promulgated pursuant to this chapter.

Neither the principal nor surety on the bond or other financial instrument may terminate the coverage of the bond, except upon giving one hundred twenty (120) days' prior written notice to the director.

History.
I.C., § 33-2407, as added by 1993, ch. 57, § 3, p. 154; am. and redesig. 2006, ch. 240, § 10, p. 725; am. 2009, ch. 26, § 7, p. 73; am. 2010, ch. 79, § 9, p. 133; am. 2011, ch. 159, § 5, p. 447; am. 2013, ch. 31, § 1, p. 69.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 26, rewrote the section to the extent that a detailed comparison is impracticable.

The 2010 amendment, by ch. 79, substituted the second occurrence of "proprietary school" for "propriety school" in the first paragraph.

The 2011 amendment, by ch. 159, added the last sentence in the first paragraph; substituted "director" for "board or its designee" near the beginning of the second paragraph; and substituted "director" for "board" at the end of the last paragraph.

The 2013 amendment, by ch. 31, in the first paragraph, inserted "or other financial instrument in a format approved by the director" near the beginning and inserted "the provisions of" near the end and deleted the former last sentence, which read: "The board may permit the director to accept from a newly registered proprietary school, for a period not to exceed five (5) years, a bond in a lesser amount that is supplemented by other financial instruments deemed acceptable by the director"; and inserted "or other financial instrument" near the beginning of the last paragraph.

33-2407. Powers and duties of director. — (1) In addition to the other duties imposed upon the director by law, the director, either personally or by designee, shall be permitted to:

(a) Administer and enforce the provisions and requirements of this chapter or rules promulgated under authority of this chapter.

(b) Conduct investigations and issue subpoenas as necessary to determine whether any person or any agent has violated or is violating any provision of this chapter or rules promulgated under authority of this chapter.

(c) Upon reasonable notice, conduct examinations of the books and records of postsecondary educational institutions and proprietary schools, and investigations of any person or any agent, wherever located, and as may be necessary and proper for the enforcement of the provisions of this chapter and the rules promulgated under the authority of this chapter.

For these purposes, the director or his designated representative shall have free access to the offices and places of business or operations, books, accounts, papers, documents, other information, records, files, safes and vaults of all such persons or agents.

(2) The director may issue orders and the board may promulgate rules that, in the opinion of the director and board respectively, are necessary to execute, enforce and effectuate the purposes of this chapter.

History.

I.C., § 33-2407, as added by 2011, ch. 159, § 6, p. 447.

33-2408. Remedies — Civil penalties. — (1) Whenever there is sufficient evidence that causes the director to conclude that any person or any agent has engaged in or is about to engage in any act or practice constituting a violation of any provisions of this chapter or any rule or order thereunder, the director may:

(a) Issue a cease and desist order ordering such person or agent to cease and desist violating or continuing to violate any provision of this chapter or any rule or order issued in accordance with this chapter; or

(b) Apply to the district court for an order enjoining such person or agent from violating or continuing to violate any provision of this chapter or any

rule or order and for injunctive or such other relief as the nature of the case may require.

(2) Within thirty (30) days after an order is issued under subsection (1)(a) of this section, the person or agent to whom the order is directed may file with the director a request for a hearing on the order. The provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to such hearing and to judicial review of such order.

(3) Upon showing in any court of competent jurisdiction that a person or agent has violated the provisions of this chapter or rule adopted pursuant to the provisions of this chapter, in addition to any other remedies, such court may order the person or agent to pay civil penalties in an amount established by the court for each violation. Such court may also enter an order entitling the director to recover costs, which in the discretion of the court may include an amount representing reasonable attorney's fees and reimbursement for investigative efforts.

History.
I.C., § 33-2408, as added by 2011, ch. 159, § 7, p. 447.

33-2409. Criminal penalties. — (1) Any person who intentionally violates the provisions of this chapter is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five thousand dollars ($5,000), or both.

(2) Any person who intentionally fails to register according to the provisions of this chapter is guilty of a felony punishable by imprisonment in the county jail not exceeding twelve (12) months, or by a fine not exceeding ten thousand dollars ($10,000), or both.

History.
I.C., § 33-2409, as added by 2006, ch. 240, § 13, p. 725; am. 2011, ch. 159, § 8, p. 447.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 159, rewrote the section heading, which formerly read: "Enforcement"; and rewrote the section, which read: "Any violation of the provisions of this chapter shall be referred to the attorney general by the board for appropriate action including, but not limited to, injunctive relief."

CHAPTER 25

COMMISSION FOR LIBRARIES

SECTION.
33-2502. Board of library commissioners — Appointment, removal and terms — Officers — Meetings — Compensation.

33-2502. Board of library commissioners — Appointment, removal and terms — Officers — Meetings — Compensation. — The board of library commissioners shall, for the purposes of section 20, article

IV of the constitution of the state of Idaho, be maintained within the department of self-governing agencies and shall consist of five (5) commissioners appointed by the governor. The board shall nominate to the governor qualified candidates to fill any board vacancy. The governor shall consider geographic representation when selecting board commissioners by appointing one (1) board commissioner from the northern part of the state, one (1) board commissioner from the eastern part of the state, one (1) board commissioner from the southwestern part of the state and one (1) board commissioner from each of the two (2) congressional districts. Appointments are for five (5) year terms and commissioners may serve more than one (1) term. At the end of a term, the commissioner shall continue to serve until a successor is appointed and qualifies. A vacancy on the board of library commissioners shall be filled in the same manner as regular appointments and shall be for the unexpired portion of the term. The governor may remove board commissioners for cause including, but not limited to, frequent absences from board meetings. The board of library commissioners shall annually elect a chairman, vice chairman and other officers as it deems reasonably necessary. The board of library commissioners shall meet at least twice each year. Commissioners shall be compensated as provided by section 59-509(n), Idaho Code.

History.
I.C., § 33-2502, as added by 1998, ch. 57, § 2, p. 211; am. 2006, ch. 235, § 3, p. 701; am. 2009, ch. 178, § 2, p. 575.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 178, substituted "appointment, removal and terms" for "membership" in the section heading and rewrote the section to the extent that a detailed comparison is impracticable.

CHAPTER 27

PUBLIC LIBRARY DISTRICTS

SECTION.
33-2709. Existing tax supported city libraries may join library districts.
33-2715. Board of trustees — Selection — Number — Qualifications — Term — Oath — Appointment of first board.
33-2716. Board of trustees — Nomination and election — Recall — Vacancies.
33-2717A. Declaration of intent for write-in candidate.
33-2717B. Withdrawal of candidacy. [Repealed.]
33-2717C. Procedure for correction of ballots. [Repealed.]
33-2718. Creation of trustee zones.
33-2722. Treasurer — Clerk.
33-2728. Bond election.
33-2739. School-community library districts — Board of trustees — Powers and duties — Fiscal year.
33-2741. Public library — Internet use policy required.

33-2709. Existing tax supported city libraries may join library districts. — Any tax supported city library may join an established library district by majority vote of the qualified electors of the city according to procedure set forth in section 33-2707, Idaho Code. A true copy of the petition and the district library board's notice of approval or disapproval

shall be sent to the city council. When the notice carries the approval of the district library board, the city clerk shall order the election and give notice to the county clerk who shall conduct the election in a manner consistent with chapter 14, title 34, Idaho Code, and at such time as prescribed in section 34-106, Idaho Code. After receiving the certification of results of the election from the county clerk, the city council shall give notice of those results to the library district board and the board of county commissioners.

If the proposal has been approved by the majority required, the board of county commissioners of the home county of the district shall enter its order amending the boundaries of the district, including a map drawn in a draftsmanlike manner, and a copy shall be transmitted to the board of trustees of the library district, to the board of county commissioners of the county in which the petition arose, and to the board of library commissioners.

The board of trustees of the library district shall transmit a copy of the order to the county recorder, the county assessor of the home county and the state tax commission in a timely manner, but no later than December 15, in the year in which the election was held.

Addition of new territory to an existing library district shall not be considered an initial establishment. The existing district board of trustees shall continue to serve for the terms for which elected. When a vacancy occurs, appointment shall be made as provided in section 33-2716, Idaho Code.

History.

1963, ch. 188, § 8, p. 568; am. and redesig. 1990, ch. 378, § 6, p. 1046; am. 1996, ch. 71, § 10, p. 216; am. 2006, ch. 235, § 23, p. 701; am. 2013, ch. 135, § 1, p. 307.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 135, in the first paragraph, substituted "clerk shall order the election and give notice to the county clerk who shall conduct the election in a manner consistent with chapter 14, title 34, Idaho Code, and at such time as prescribed in section 34-106, Idaho Code" for "council shall conduct the election and give notice of the results to the library district board and the board of county commissioners" at the end of the third sentence and added the last sentence.

Effective Dates.

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

33-2715. Board of trustees — Selection — Number — Qualifications — Term — Oath — Appointment of first board. — (1) Each library district shall be governed by a board of trustees of five (5) members elected or appointed as provided by law, who at the time of their selection and during their terms of office shall be qualified electors of the district and if trustee zones have been established under section 33-2718, Idaho Code, shall be a resident of the trustee zone. Trustees shall be elected at each trustee election, held on the uniform election date in May. The regular term of a trustee shall be for six (6) years, or until his successor has been elected and qualified. Within ten (10) days after his appointment an appointed trustee shall qualify and assume the duties of his office. An elected trustee

shall qualify and assume the duties of his office at the annual meeting. All trustees qualify by taking the oath of office required of state officers, to be administered by one (1) of the present trustees or by a trustee retiring.

(2) Following the initial establishment of a library district, the board of county commissioners of the home county within five (5) days shall appoint the members of the first board of trustees, who shall serve until the next election of trustees held in an odd-numbered year or until their successors are elected and qualified in an odd-numbered year. The initial election of trustees shall be for terms of four (4) years for two (2) trustees and thereafter their terms shall be for six (6) years, terms of six (6) years for two (2) trustees and thereafter their terms shall be for six (6) years, and a term of two (2) years for one (1) trustee and thereafter the term shall be for six (6) years. Addition of new territory to an existing library district shall not be considered an initial establishment. The first board of trustees shall be sworn by a member of the board of county commissioners of the home county of the district.

(3) At its first meeting, and after each trustee election, the board shall organize and elect from its membership a chairman and other officers necessary to conduct the affairs of the district.

(4) Members of the board shall serve without salary but shall receive their actual and necessary expenses while engaged in business of the district.

(5) For the purpose of achieving an orderly transition to terms of six (6) years and to hold trustee elections in odd-numbered years, the following schedule shall be followed:

(a) For trustees elected in 2005, their terms shall expire in 2011 and the terms for each of those elected in 2011 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(b) For trustees elected in 2006, their terms shall expire in 2011 and the terms for each of those elected in 2011 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(c) For trustees elected in 2007, their terms shall expire in 2013 and the terms for each of those elected in 2013 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(d) For trustees elected in 2008, their terms shall expire in 2013 and the terms for each of those elected in 2013 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(e) For trustees elected in 2009, their terms shall expire in 2015 and the terms for each of those elected in 2015 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(f) For trustees elected in 2010, their terms shall expire in 2015 and the terms for each of those elected in 2015 shall be six (6) years and thereafter those terms shall be for six (6) years.

History.

1963, ch. 188, § 9, p. 568; am. 1983, ch. 107, § 1, p. 226; am. and redesig. 1989, ch. 132, § 10, p. 286; am. 1996, ch. 71, § 15, p. 216; am. 2002, ch. 312, § 3, p. 886; am. 2009, ch. 341, § 52, p. 993; am. 2010, ch. 185, § 4, p. 382.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, added the subsection (1) designation, and therein, in the second sentence, substituted "Trustees" for "One (1) trustee" and deleted "annual" preceding "trustee election," and, in the third sentence, substituted "six (6) years" for "five (5) years"; added the subsection (2) designation, and therein, in the first sentence, deleted "annual" preceding "election of trustees," inserted "held in an odd-numbered year," and added "in an odd-numbered year" and rewrote the second sentence, which formerly read: "The initial election of trustees shall be for terms of one (1), two (2), three (3), four (4) and five (5) years respectively"; and added the subsection (3) and (4) designations and subsection (5).

The 2010 amendment, by ch. 185, added paragraph (5)(f).

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-2716. Board of trustees — Nomination and election — Recall — Vacancies. — (1) The procedure for nomination and election of trustees of a library district shall be as provided for in chapter 14, title 34, Idaho Code, and in the general election laws of Idaho. If any two (2) or more candidates for the same trustee position have an equal number of votes, the board of trustees shall determine the winner by a toss of a coin.

(2) Each library district trustee shall be subject to recall following procedures as provided in chapter 17, title 34, Idaho Code.

Individuals signing a petition to recall a library trustee or voting in an election to recall a library trustee shall meet the requirements of section 33-2702, Idaho Code.

To recall any trustee, a majority of the votes cast at the recall election must be in favor of the recall, and additionally, the number of votes cast in the recall election must equal or exceed the number of votes cast in the last trustee election held in the library district.

(3) A vacancy shall be declared by the board of trustees when any nominee has been elected but has failed to qualify for office, or within thirty (30) days of when any trustees shall (a) die; (b) resign from office; (c) no longer reside in his respective trustee zone of residence; (d) no longer be a resident or qualified elector of the public library district; (e) refuse to serve as trustee; (f) without excuse acceptable to the board of trustees, fail to attend two (2) consecutive regular meetings of the board; or (g) be recalled and discharged from office as provided in this chapter.

A declaration of vacancy shall be made at any regular or special meeting of the board of trustees, at which any of the above-mentioned conditions is determined to exist.

The board of trustees shall appoint to fill the vacancy, a person qualified to serve as trustee of the public library district, provided there remains in membership on the board of trustees a majority of the membership thereof, and the board shall notify the board of library commissioners of the appointment. This appointment shall be made within sixty (60) days of the declaration of vacancy. In the event that the board of trustees fails to exercise their authority, appointments shall be made by the board of county commissioners of the home county in which the district is located within thirty (30) days after the expiration of the sixty (60) days allowed for trustees for this action.

Any person appointed as provided in this chapter shall serve until the next election of public library district trustees following the appointment. At the election a trustee shall be elected to complete the unexpired term of the office which was declared vacant filled by appointment.

The elected trustee shall assume office at the first annual meeting of the public library district following the election.

History.

I.C., § 33-2710, as added by 1980, ch. 231, § 2, p. 512; am. and redesig. 1989, ch. 132, § 11, p. 286; am. 1993, ch. 303, § 3, p. 1124; am. 1995, ch. 119, § 9, p. 513; am. 1996, ch. 71, § 16, p. 216; am. 2006, ch. 235, § 25, p. 701; am. 2009, ch. 341, § 53, p. 993; am. 2012, ch. 148, § 1, p. 418.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in the fourth paragraph in subsection (3), twice deleted "annual" preceding "election."

The 2012 amendment, by ch. 148, in subsection (2), deleted "Notwithstanding the limitations of chapter 17, title 34, Idaho Code" from the beginning and substituted "as provided in" for "as closely as possible to the procedures described for the recall of county commissioners pursuant to" near the end of the first paragraph and deleted "If, pursuant to section 33-2717, Idaho Code, no election was held for the trustee being recalled: (a) The number of district electors required to sign the petition seeking a recall election must be not less than fifty (50), or twenty percent (20%) of the number of votes cast in the last trustee election held in the library district, whichever is the greater" and deleted the designation (b) from the last paragraph of subsection (2).

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-2717A. Declaration of intent for write-in candidate. — No write-in vote for library district trustee in a library district election shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of library trustee if elected. The declaration of intent shall be filed with the clerk of the library board not later than forty-five (45) days before the day of election.

History.

I.C., § 33-2717A, as added by 1992, ch. 4, § 2, p. 9; am. 1996, ch. 71, § 18, p. 216; am. 2013, ch. 135, § 2, p. 307.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 135, substituted "forty-five (45) days" for "twenty-five (25) days" in the last sentence.

Effective Dates.

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

33-2717B. Withdrawal of candidacy. [Repealed.]

Repealed by S.L. 2011, ch. 11, § 7, effective January 1, 2011.

History.

I.C., § 33-2717B, as added by 1996, ch. 71, § 19, p. 216.

STATUTORY NOTES

Effective Dates.
Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011. Approved February 23, 2011.

33-2717C. Procedure for correction of ballots. [Repealed.]

Repealed by S.L. 2011, ch. 11, § 7, effective January 1, 2011.

History.
I.C., § 33-2717C, as added by 1996, ch. 71, § 20, p. 216.

STATUTORY NOTES

Effective Dates.
Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011. Approved February 23, 2011.

33-2718. Creation of trustee zones. — (1) Each library district may be divided into five (5) trustee zones with each zone having approximately the same population. To the maximum extent possible, boundaries of trustee zones shall follow the existing boundaries of the electoral precincts of the county. They shall be revised, as necessary, to equalize population and to follow new electoral precinct boundaries following the publication of the report of each decennial census. In order for a library district to be divided into trustee zones, the board of trustees shall pass a motion declaring the district to be divided into trustee zones and providing a legal description of each trustee zone. The board of trustees shall transmit the motion along with the legal description of the trustee zones to the board or boards of county commissioners in the county or counties where the library district is contained and to the board of library commissioners. The board or boards of county commissioners shall have forty-five (45) days from the receipt of the motion and legal description to reject, by adoption of a motion, the establishment of trustee zones proposed by formal motion of the board of trustees of the library district. If the board or boards of county commissioners do not reject the establishment of the trustee zones within the time limit specified, they shall be deemed to be in full force and effect. If a library district is contained in more than one (1) county, a motion of rejection adopted by one (1) board of county commissioners shall be sufficient to keep the trustee zone plan from going into effect. A board of county commissioners shall notify the library board of trustees in writing if a proposal is rejected.

(2) If a proposal for the establishment of trustee zones is rejected by a board of county commissioners, the boundaries of the trustee zones, if any, shall return to the dimensions they were before the rejection. Trustee zones may be redefined and changed, but not more than once every two (2) years after a new set of trustee zones are formally established and in full force and effect.

(3) At the next regular meeting of the board of trustees of the library district following the creation of trustee zones, the public library district board shall appoint from its membership or from other qualified electors resident in each trustee zone, a person from that zone to serve as a trustee

until the next regularly scheduled trustee election from that zone, which election shall be held in an odd-numbered year. The initial election of trustees for the trustee zones shall be for terms of four (4) years for two (2) trustees and thereafter their terms shall be for six (6) years, terms of six (6) years for two (2) trustees and thereafter their terms shall be for six (6) years, and a term of two (2) years for one (1) trustee and thereafter the term shall be for six (6) years, with each zone being assigned an initial term length by a random drawing of the numbers one (1) through five (5).

(4) For the purpose of achieving an orderly transition to terms of six (6) years and hold trustee elections in odd-numbered years, the following schedule shall be followed:

(a) For trustees elected in 2005, their terms shall expire in 2011 and the terms for each of those elected in 2011 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(b) For trustees elected in 2006, their terms shall expire in 2011 and the terms for each of those elected in 2011 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(c) For trustees elected in 2007, their terms shall expire in 2013 and the terms for each of those elected in 2013 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(d) For trustees elected in 2008, their terms shall expire in 2013 and the terms for each of those elected in 2013 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(e) For trustees elected in 2009, their terms shall expire in 2015 and the terms for each of those elected in 2015 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(f) For trustees elected in 2010, their terms shall expire in 2015 and the terms for each of those elected in 2015 shall be six (6) years and thereafter those terms shall be for six (6) years.

History.

I.C., § 33-2710B, as added by 1983, ch. 107, § 2, p. 226; am. and redesig. 1989, ch. 132, § 13, p. 286; am. 1996, ch. 71, § 21, p. 216; am. 2002, ch. 312, § 4, p. 886; am. 2006, ch. 235, § 27, p. 701; am. 2009, ch. 341, § 54, p. 993; am. 2010, ch. 185, § 5, p. 382.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, added the subsection (1) through (3) designations, rewriting subsection (3) to the extent that a detailed comparison is impracticable; and added subsection (4).

The 2010 amendment, by ch. 185, added paragraph (4)(f).

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

33-2722. Treasurer — Clerk. — The board of trustees of each library district shall appoint some qualified person, who may or may not be a member of the board of trustees, to act as treasurer of the library district. This person shall, on taking office, give bond to the library district, with sureties approved by the board of trustees, in the amount of at least five

thousand dollars ($5,000), which bond shall be paid for by the district and shall be conditioned upon faithful performance of the duties of his office and his accounting for all moneys of the library district received by him or under his control. The treasurer shall supervise all moneys raised for the library district by taxation or received by the district from any other sources and shall supervise all disbursements of funds of the district by order of the board of trustees.

Under the direction of the board of trustees, the treasurer shall have all moneys of the district deposited in accordance with the public depository law and other applicable state and federal laws.

The board of trustees of each library district shall appoint some qualified person, who may or may not be a member of the board of trustees, to act as clerk of the library board. The clerk shall prepare and distribute legal notices and shall have other duties as the board may prescribe.

History.
1963, ch. 188, § 15, p. 568; am. and redesig. 1989, ch. 132, § 17, p. 286; am. 1996, ch. 71, § 25, p. 216; am. 2002, ch. 312, § 8, p. 886; am. 2011, ch. 11, § 9, p. 24.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 11, deleted "conduct library district elections, other than for excision, annexation, consolidation, or division; shall" following "the clerk shall" in the second sentence in the last paragraph.

Effective Dates.
Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011. Approved February 23, 2011.

33-2728. Bond election. — (1) The purposes for which bonds may be issued shall be: To acquire, purchase, or improve a library site or sites; to build a library or libraries, or other building or buildings; to demolish or remove buildings; to add to, remodel or repair any existing building; to furnish and equip any building or buildings, including all facilities and appliances necessary to maintain and operate the buildings of the library; and to purchase motor vehicles for use as bookmobiles.

The library district may issue bonds in an amount not to exceed one percent (1%) of the market value for assessment purposes of property within the district, less any aggregate outstanding indebtedness.

The board of trustees of any library district, upon approval of a majority thereof, may call a bond election on the question as to whether the board shall be empowered to issue bonds of the district in an amount and for a period of time to be stated in the notice of election. The notice of bond elections, the qualification of bond electors, the conduct of the election, and the canvass of election and determination of the result of election shall be in accordance with chapter 14, title 34, Idaho Code, and with the general election laws of the state of Idaho. Provided however, that any such election conducted pursuant to this section shall be held on election day in the month of May or November as provided for in section 34-106(1), Idaho Code. The majority required to pass a bond issue shall be two-thirds (2/3) of those voting in the election. The issuance of bonds, the expenditure of bond

proceeds and the repayment of the bonds shall all be as specified in school district law.

(2) District library bond funds may not be used to purchase or expand a building for a contracting agency providing library services unless the district library gains an ownership share in the building proportional to the percentage of district bond funds used to purchase or expand the building.

History.

I.C., § 33-2723, as added by 1965, ch. 255, § 5, p. 648; am. 1980, ch. 350, § 16, p. 887; am. and redesig. 1989, ch. 132, § 24, p. 286; am. 1993, ch. 303, § 4, p. 1124; am. 2002, ch. 155, § 2, p. 450; am. 2009, ch. 132, § 1, p. 413.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 132, in subsection (1), in the second paragraph, substituted "one percent (1%)" for "four-tenths percent (.4%)" and added the third sentence in the third paragraph.

33-2739. School-community library districts — Board of trustees — Powers and duties — Fiscal year. — (1) The board of trustees of the school-community library district shall perform the duties required of, and have the power and authority granted to library district trustees pursuant to this chapter, including the authority to levy upon the taxable property in the school-community library district an annual tax not to exceed six hundredths percent (.06%) of market value for assessment purposes for establishing and maintaining public library services. The school-community library district board shall have exclusive control of the school-community library district fund and shall cause to be made a full and complete audit of the books and accounts of the district as provided for in section 33-2726, Idaho Code.

(2) On and after fiscal year 1995, school-community library districts shall have a fiscal year of October 1 through September 30.

History.

I.C., § 33-2739, as added by 1992, ch. 275, § 2, p. 848; am. 1993, ch. 316, § 1, p. 1171; am. 2009, ch. 11, § 8, p. 14.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 11, deleted former subsection (2), which contained obsolete language concerning levies, and redesignated former subsection (3) as present subsection (2).

33-2741. Public library — Internet use policy required. — (1) Public libraries receiving public moneys and governed by the provisions of chapters 26 and 27, title 33, Idaho Code, that offer use of the internet or an online service to the public:

(a)(i) Shall have in place a policy of internet safety for minors including the operation of a technology protection measure with respect to any publicly accessible computers with internet access and that protects against access through such computers to visual depictions that are obscene or child pornography or harmful to minors; and

(ii) Shall enforce the operation of such technology protection measure during any use of a computer by a minor.

(b)(i) Shall have in place a policy of internet safety, which may include the operation of a technology protection measure with respect to any publicly accessible computers with internet access and that protects against access through such computers to visual depictions that are obscene or child pornography; and

(ii) May enforce the operation of such technology protection measure during any use of a computer.

(2) The provisions of this section shall not prohibit a public library from limiting internet access or otherwise protecting against materials other than the materials specified in this section.

(3) An administrator, supervisor or other authorized representative of a public library may disable a technology protection measure described in subsection (1) at the request of a library patron to enable access for lawful purposes.

(4) Each public library's policy shall be developed under the direction of the library's board of trustees, adopted in an open meeting and shall have an effective date. The board of trustees shall review the policy at least once every three (3) years. The policy shall reflect the most recent date of review.

(5) Notice of the availability of the policy shall be posted in a conspicuous place within the library for all patrons to observe. The board of trustees may issue any other public notice it considers appropriate to inform the community about the policy.

(6) The policy may:

(a) State that it restricts access to internet or online sites that contain material described in subsection (1) of this section and how the policy meets the requirements provided for in this section;

(b) Inform patrons that administrative procedures and guidelines for library staff to follow in enforcing the policy have been adopted and are available for review at the library; and

(c) Inform patrons that procedures for use by patrons and staff to handle complaints about the policy, its enforcement or about observed patron behavior have been adopted and are available for review at the library.

(7) For purposes of this section, the following terms shall have the following meanings:

(a) "Child pornography" means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(i) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(ii) Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

(iii) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

(b) "Harmful to minors" means any picture, image, graphic image file or other visual depiction that:

(i) Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex or excretion;

(ii) Depicts, describes or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(iii) Taken as a whole, lacks serious literary, artistic, political or scientific value as to minors.

(c) "Minor" means anyone who has not attained the age of eighteen (18) years.

(d) "Obscene" means a depiction that:

(i) The average person, applying contemporary community standards, would find to appeal to the prurient interest;

(ii) Depicts or describes sexual conduct in a patently offensive way; and

(iii) Lacks serious literary, artistic, political or scientific value.

(e) "Public moneys" means any and all moneys belonging to or collected by the state or any political subdivision thereof including, but not necessarily limited to, any city, county, town or district therein.

(8) The provisions of this section shall have no effect on the provisions of section 33-132, Idaho Code.

History.
I.C., § 33-2741, as added by 2011, ch. 260, § 1, p. 705.

STATUTORY NOTES

Effective Dates.
Section 2 of S.L. 2011, ch. 260 provided that the act should take effect on and after October 12, 2012.

CHAPTER 28

UNIVERSITY OF IDAHO

SECTION.
33-2815. Practical prospecting and practical mining — Courses in.

33-2815. Practical prospecting and practical mining — Courses in. — The board of regents of the University of Idaho, and of the Idaho geological survey may prescribe a special course of instructions in practical prospecting, including a short course in practical mining including identification and classification of minerals at the University of Idaho, or in a mobile unit of the school of mines, which shall be open to special students desirous of studying such subjects, but who may be ineligible for admission to enter the University of Idaho on account of having deficient entrance credits.

History.
1945, ch. 136, § 1, p. 206; am. 2009, ch. 11, § 9, p. 14.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 11, substituted "Idaho geological survey" for "Idaho bureau of mines and geology."

CHAPTER 30

IDAHO STATE UNIVERSITY

SECTION.
33-3008. Board may maintain training school. [Repealed.]

33-3008. Board may maintain training school. [Repealed.]

Repealed by S.L. 2011, ch. 90, § 1, effective July 1, 2011.

History.
1963, ch. 12, § 8, p. 23.

CHAPTER 34

IDAHO BUREAU OF EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND ACT OF 2009

SECTION.
33-3401. Short title.
33-3402. Definitions.
33-3403. Bureau of educational services for the deaf and the blind established — Goal.
33-3404. Board of directors.
33-3405. Board of directors to appoint administrator — Designation of assistants — Duties.
33-3406. Powers and duties of the board of directors.
33-3407. Governmental entity — Liability — Insurance.
33-3408. Expenditures — Budget — Funding.
33-3409. Rules.
33-3410. Reporting deaf and blind pupils.
33-3411. Acquisition of and title to property.
33-3412. Sick leave transferred for employees of Idaho school for the deaf and the blind to Idaho bureau of educational services for the deaf and the blind.
33-3413. Sectarian tests prohibited.
33-3414. General fund contingency reserve.

33-3401. Short title. — This chapter shall be known and may be cited as the "Idaho Bureau of Educational Services for the Deaf and the Blind Act of 2009."

History.
I.C., § 33-3401, as added by 2009, ch. 168, § 4, p. 502.

STATUTORY NOTES

Prior Laws.
Former chapter 34 of title 33, which comprised the following sections, was repealed by S.L. 2009, ch. 168, § 1.

33-3401. Establishment of school for the deaf and blind. [1963, ch. 102, § 1, p. 320; am. 1990, ch. 237, § 2, p. 674; am. 2006, ch. 383, § 1, p. 1201.]

33-3402. Body politic and corporate-Board of trustees. [1963, ch. 102, § 2, p. 320; am. 1990, ch. 237, § 3, p. 674.]

33-3403. Organization, meetings and proceedings of the board. [1963, ch. 102, § 3, p. 320.]

33-3404. Title to property-Acquiring, selling or exchanging property. [1963, ch. 102, § 4, p. 320; am. 1990, ch. 237, § 4, p. 674.]

33-3405. General powers of the board. [1963, ch. 102, § 5, p. 320; am. 1990, ch. 237, § 5, p. 674; am 2005, ch. 65, §n 3, p. 228; am. 2005, ch. 258, § 1, p. 794.]

33-3406. Sectarian tests prohibited. [1963, ch. 102, § 6, p. 320.]

33-3407. Definition of the deaf and the blind-Examination of applicants-Admission and release of pupils. [1963, ch. 102, § 7, p. 320; am. 2006, ch. 383, § 2, p. 1201; am. 2007, ch. 90, § 16, p. 246.]

33-3408. Reporting deaf and blind pupils. [1963, ch. 102, § 8, p. 320; am. 1990, ch. 237, § 6, p. 674.]

33-3409. General fund contingency reserve. [I.C., § 33-3409, as added by 2002, ch. 334, § 1, p. 949.]

33-3402. Definitions. — As used in this chapter:

(1) "Blind or visually impaired" means impacted by an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(2) "Board of directors" also referred to in this chapter as "the board" means the board of directors of the Idaho bureau of educational services for the deaf and the blind as such board is established in section 33-3404, Idaho Code.

(3) "Bureau" means the Idaho bureau of educational services for the deaf and the blind as created in section 33-3403, Idaho Code.

(4) "Deaf or hard of hearing" means impacted by an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance, or impacted by a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

(5) "Idaho school for the deaf and the blind" means the campus program used to provide residential and day campus instruction and services to deaf or hard of hearing and/or blind or visually impaired students.

(6) "Outreach services" means off-campus statewide supplemental services provided by the Idaho bureau of educational services for the deaf and the blind to school districts, students and families.

(7) "Sensory impairment" means an impairment of vision or hearing, or both.

(8) "Specialized/certified personnel" means all personnel nationally certified and/or certified by the state of Idaho as required by applicable law to provide services and instruction to students who are deaf or hard of hearing and/or blind or visually impaired, including, but not limited to, certified teachers of the deaf, certified teachers of the visually impaired, certified interpreters, certified orientation and mobility specialists, speech language pathologists, and certified low vision therapists.

(9) "State board" means the Idaho state board of education.

(10) "Student" means an individual who is deaf or hard of hearing and/or blind or visually impaired and who qualifies for educational services as provided for in this chapter pursuant to eligibility criteria set forth in the Idaho standards for infants, toddlers, children, and youth who are deaf or

hard of hearing as incorporated by reference in IDAPA 08.02.03.004.08 or are blind or visually impaired as incorporated by reference in IDAPA 08.02.03.004.09, in effect on January 1, 2009.

(11) "Supplemental services" means services provided to deaf or hard of hearing and/or blind or visually impaired students and their families, in addition to and in support of services the student may receive from his or her school district. Such services may include assessment, consultation and direct instruction.

History.
I.C., § 33-3402, as added by 2009, ch. 168, § 4, p. 502; am. 2010, ch. 191, § 3, p. 405.

STATUTORY NOTES

Prior Laws.
Former § 33-3402 was repealed. See Prior Laws, § 33-3401.

Amendments.
The 2010 amendment, by ch. 191, in subsection (10), substituted "incorporated by reference in IDAPA 08.02.03.004.08 or are blind or visually impaired as incorporated by reference in IDAPA 08.02.03.004.09," for "incorporated by reference in IDAPA 08.02.03.004.08 and 08.02.03.004.09."

33-3403. Bureau of educational services for the deaf and the blind established — Goal. — (1) There is hereby established the Idaho bureau of educational services for the deaf and the blind, a provider of supplemental services for students who are deaf or hard of hearing and/or blind or visually impaired. The Idaho bureau of educational services for the deaf and the blind may operate a school for the deaf and the blind at which it shall provide residential and day campus programs. The Idaho bureau of educational services for the deaf and the blind may also operate an outreach program intended to provide services to students outside the campus area, as well as early intervention and family consultation.

(2) The goal of the Idaho bureau of educational services for the deaf and the blind is to assist school districts and state agencies in providing accessibility, quality and equity to students in the state with sensory impairments through a continuum of service and placement options.

History.
I.C., § 33-3403, as added by 2009, ch. 168, § 4, p. 502.

STATUTORY NOTES

Prior Laws.
Former § 33-3403 was repealed. See Prior Laws, § 33-3401.

33-3404. Board of directors. — (1) The Idaho bureau of educational services for the deaf and the blind shall be governed by a board of directors which shall be responsible for development and oversight.

(2) The board of directors shall be comprised of eight (8) members as follows:

(a) One (1) member shall be specialized/certified personnel appointed by the governor for a three (3) year term;
(b) One (1) member shall be a director of special education appointed by the governor for a three (3) year term;
(c) Two (2) members shall be citizens at-large appointed by the governor, each for three (3) year terms;
(d) One (1) member shall be a parent of a student who is deaf or hard of hearing or blind or visually impaired appointed by the governor for a three (3) year term;
(e) One (1) member shall be a citizen who is deaf or hard of hearing appointed by the governor for a three (3) year term;
(f) One (1) member shall be a citizen who is blind or visually impaired appointed by the governor for a three (3) year term; and
(g) The state superintendent of public instruction shall be chair of the board and shall serve concurrently with the term of office to which the state superintendent is elected.

(3) For purposes of establishing staggered terms of office, the initial term of office for the citizen who is blind or visually impaired and the parent of a student who is deaf or hard of hearing or blind or visually impaired shall be one (1) year, and thereafter shall be three (3) years. The initial term of office for the two (2) members at-large and for the director of special education shall be two (2) years, and thereafter shall be three (3) years. The initial term of office for the citizen who is deaf or hard of hearing and for the specialized/certified personnel shall be three (3) years, and thereafter shall be three (3) years.

(4) No voting member shall serve for more than two (2) consecutive full terms. Members of the board who are appointed to fill vacancies that occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.

History.
I.C., § 33-3404, as added by 2009, ch. 168, § 4, p. 502.

STATUTORY NOTES

Prior Laws.
Former § 33-3404 was repealed. See Prior Laws, § 33-3401.

33-3405. Board of directors to appoint administrator — Designation of assistants — Duties. — (1) The board of directors for the Idaho bureau of educational services for the deaf and the blind shall appoint a person to serve as an administrator to the bureau.

(2) The administrator shall designate, by and with the advice and consent of the board of directors, such assistants, instructors, specialists and other employees as may be necessary to properly carry out the provisions of this chapter.

(3) The administrator shall coordinate all efforts in education for the deaf and the blind approved by the board of directors and shall prepare such

reports concerning the education for the deaf and the blind in the state as the board of directors may require.

(4) The administrator shall make an annual report of the bureau's activities to the state board of education at a time and in a format designated by the state board of education.

History.
I.C., § 33-3405, as added by 2009, ch. 168, § 4, p. 502.

STATUTORY NOTES

Prior Laws.
Former § 33-3405 was repealed. See Prior Laws, § 33-3401.

33-3406. Powers and duties of the board of directors. — The board of directors for the Idaho bureau of educational services for the deaf and the blind shall have the following powers and duties:

(1) Recommend policies to be established by rule of the state board of education for effecting the purposes of this chapter.

(2) Operate a school for the deaf and the blind, including but not limited to:

(a) With the advice of the administrator, prescribe the course of study, the textbooks to be used, and for those pupils who complete the requirements for grade twelve (12), the time and standard of graduation;

(b) Upon advice and recommendation from the administrator that any pupil has ceased to make progress, or is no longer being benefited by the school's services, approve release of such pupil from the school and/or discontinue school services;

(c) Maintain general supervision and control of all property, real and personal, appertaining to the school, and to ensure the same;

(d) Employ architects or engineers as necessary in planning the construction, remodeling or repair of any building and, whenever no other agency is designated so to do, to let contracts for such construction, remodeling or repair and to supervise the work thereof; and

(e) Provide for the conveyance of pupils to and from the school.

(3) Employ or contract with outreach and other staff as necessary. The Idaho bureau of educational services for the deaf and the blind shall be exempt from the provisions of sections 33-513, 33-514, 33-514A, 33-515 and 33-515A, Idaho Code, and shall be exempt from chapter 53, title 67, Idaho Code. At the discretion of the board, all employees of the Idaho bureau of educational services for the deaf and the blind or a school for the deaf and the blind eligible for benefits may be permitted to elect to receive their salary on a year-round basis. Such a payment schedule shall not be considered a guarantee of employment.

(4) Purchase such supplies and equipment as are necessary to implement the provisions of this chapter, which purchases shall be exempt from the purchasing laws in chapter 57, title 67, Idaho Code.

(5) Enter into contracts with any other governmental or public agency whereby the bureau agrees to render services to or for such agency in

exchange for a charge reasonably calculated to cover the costs of rendering such service.

(6) Accept, receive and utilize any gifts, grants or funds and personal and real property that may be donated to it for the fulfillment of the purposes outlined in this chapter.

(7) Obtain and maintain facilities to house operations of outreach or supplemental services as needed.

(8) Manage the moneys disbursed to the bureau from any and all sources.

(9) Acquire, by purchase, exchange, or lease any property which in the judgment of the board is needed for the operation of the Idaho bureau of educational services for the deaf and the blind, including a school for the deaf and the blind, and to lease, dispose of, by sale or exchange, any property which in the judgment of the board is not needed for the operation of the same.

(10) Enter into contracts or agreements as may be necessary to carry out the purposes of this chapter.

History.
I.C., § 33-3406, as added by 2009, ch. 168, § 4, p. 502.

STATUTORY NOTES

Prior Laws.
Former § 33-3406 was repealed. See Prior Laws, § 33-3401.

33-3407. Governmental entity — Liability — Insurance. — (1) The Idaho bureau of educational services for the deaf and the blind, as provided for in this chapter, is not a single department of state government unto itself, nor is it a part of any of the twenty (20) departments of state government authorized by section 20, article IV, of the constitution of the state of Idaho, or of the departments provided for in section 67-2402, Idaho Code. It is legislative intent that the Idaho bureau of educational services for the deaf and the blind operate and be recognized not as a state agency or department, but as a governmental entity whose creation has been authorized by the state, much in the manner as other single purpose districts. For the purposes of section 59-1302(15), Idaho Code, the Idaho bureau of educational services for the deaf and the blind created pursuant to this chapter shall be deemed a governmental entity. Pursuant to the provisions of section 63-3622O, Idaho Code, sales to or purchases by the Idaho bureau of educational services for the deaf and the blind are exempt from payment of the sales and use tax. The Idaho bureau of educational services for the deaf and the blind, its employees and its board of directors are subject to the following provisions in the same manner as a traditional public school and the board of trustees of a school district:

(a) Sections 18-1351 through 18-1362, Idaho Code, on bribery and corrupt influence, except as provided by section 33-5204A(2), Idaho Code;

(b) Chapter 2, title 59, Idaho Code, on prohibitions against contracts with officers;

(c) Chapter 7, title 59, Idaho Code, on ethics in government;

(d) Chapter 23, title 67, Idaho Code, on open public meetings; and

(e) Chapter 3, title 9, Idaho Code, on disclosure of public records.

(2) The Idaho bureau of educational services for the deaf and the blind, its employees and its board of directors are subject to the following provisions:

(a) Section 33-1216, Idaho Code, on sick and other leave, or the laws, rules and policies of the state of Idaho for sick and other leave as provided for in chapter 53, title 67, Idaho Code, as determined by the board;

(b) Section 33-1217, Idaho Code, on accumulation of unused sick leave, or the laws, rules and policies of the state of Idaho for accumulation of unused sick leave as provided for in section 67-5333, Idaho Code, as determined by the board;

(c) Section 33-1218, Idaho Code, on sick leave in excess of statutory minimum amounts, or the laws, rules and policies of the state of Idaho for sick leave in excess of statutory minimum amounts as provided for in section 67-5333, Idaho Code, as determined by the board; and

(d) Section 33-1228, Idaho Code, on severance allowance at retirement, or the laws, rules and policies of the state of Idaho for severance allowance at retirement as provided for in section 67-5333, Idaho Code, as determined by the board.

(3) The Idaho bureau of educational services for the deaf and the blind may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of traditional public school districts and other public schools, including those provided by chapter 9, title 6, Idaho Code.

(4) The Idaho bureau of educational services for the deaf and the blind shall be considered a state department for purposes of risk management and group insurance pursuant to chapter 57, title 67, Idaho Code, and the department of administration shall treat the bureau as such.

(5) It shall be unlawful for:

(a) Any director to have pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the Idaho bureau of educational services for the deaf and the blind, or to accept any reward or compensation for services rendered as a director except as may be otherwise provided in this subsection. The board of directors of the Idaho bureau of educational services for the deaf and the blind may accept and award contracts involving the Idaho bureau of educational services for the deaf and the blind to businesses in which the director or a person related to him by blood or marriage within the second degree of consanguinity has a direct or indirect interest, provided that the procedures set forth in section 18-1361 or 18-1361A, Idaho Code, are followed. The receiving, soliciting or acceptance of moneys of the Idaho bureau of educational services for the deaf and the blind for deposit in any bank or trust company, or the lending of moneys by any bank or trust company to the Idaho bureau of educational services for the deaf and the blind, shall not be deemed to be a contract pertaining to the maintenance or conduct of the Idaho bureau of educational services for the deaf and the

blind within the meaning of this section; nor shall the payment of compensation by the Idaho bureau of educational services for the deaf and the blind board of directors to any bank or trust company for services rendered in the transaction of any banking business with the Idaho bureau of educational services for the deaf and the blind board of directors be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company within the meaning of this section.

(b) The board of directors of the Idaho bureau of educational services for the deaf and the blind to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract require, or shall require, the payment or delivery of any Idaho bureau of educational services for the deaf and the blind funds, moneys or property to such spouse, except as provided in section 18-1361 or 18-1361A, Idaho Code.

(6) When any relative of any director, or relative of the spouse of a director related by affinity or consanguinity within the second degree, is to be considered for employment in the Idaho bureau of educational services for the deaf and the blind, such director shall abstain from voting in the election of such relative, and shall be absent from the meeting while such employment is being considered and determined.

History.

I.C., § 33-3407, as added by 2009, ch. 168, § 4, p. 502; am. 2010, ch. 191, § 4, p. 405; am. 2011, ch. 43, § 1, p. 98.

STATUTORY NOTES

Prior Laws.

Former § 33-3407 was repealed. See Prior Laws, § 33-3401.

Amendments.

The 2010 amendment, by ch. 191, in the introductory paragraph in subsection (1), rewrote the first sentence which formerly read: "The Idaho bureau of educational services for the deaf and blind shall be a governmental entity as provided in section 33-5502, Idaho Code," and added the second sentence; added the introductory paragraph in subsection (2); redesignated paragraphs (1)(f) through (1)(i) as paragraphs (2)(a) through (2)(d); in paragraphs (2)(a) through (2)(d), added the language beginning "or the laws, rules and policies" through to the end; redesignated former subsections (2) through (5) as subsections (3) through (6); and rewrote present subsection (4), which formerly read: "The Idaho bureau of educational services for the deaf and the blind shall secure insurance for liability and property loss."

The 2011 amendment, by ch. 43, substituted "section 67-5333, Idaho Code" for "section 67-5342, Idaho Code" near the end of paragraph (2)(d).

Effective Dates.

Section 3 of S.L. 2011, ch. 43 declared an emergency and made the amendment of this section retroactive to July 1, 2010. Approved March 8, 2011.

33-3408. Expenditures — Budget — Funding. — (1) There is hereby created in the state treasury the Idaho bureau of educational services for the deaf and the blind trust fund, which is hereby continuously appropriated to the Idaho bureau of educational services for the deaf and the blind. The fund shall consist of appropriations, fees, grants, gifts or moneys from any other source. The state treasurer shall invest all idle moneys in the fund and interest earned on such investments shall be retained by the fund.

(2) On or before the first Monday in July, there shall be held at the time

and place determined by the Idaho bureau of educational services for the deaf and the blind board, a budget meeting and public hearing upon the proposed budget of the Idaho bureau of educational services for the deaf and the blind. Notice of the budget meeting and public hearing shall be posted at least ten (10) full days prior to the date of the meeting in at least one (1) conspicuous place to be determined by the Idaho bureau of educational services for the deaf and the blind board of directors. The place, hour and day of the hearing shall be specified in the notice, as well as the place where such budget may be examined prior to the hearing. On or before the first Monday in July a budget for the Idaho bureau of educational services for the deaf and the blind shall be agreed upon and approved by the majority of the Idaho bureau of educational services for the deaf and the blind board of directors.

(3) The Idaho bureau of educational services for the deaf and the blind shall submit its annual appropriation request to the state superintendent of public instruction, by no later than the first day of August, for the superintendent's review, approval, and inclusion in the budget request of the educational support program. The state superintendent of public instruction shall disburse any funds appropriated to the Idaho bureau of educational services for the deaf and the blind trust fund. The Idaho bureau of educational services for the deaf and the blind board of directors shall use such moneys to provide supplemental services to deaf or hard of hearing and blind or visually impaired students in the state of Idaho.

History.
I.C., § 33-3408, as added by 2009, ch. 168, § 4, p. 502; am. 2010, ch. 191, § 5, p. 405.

STATUTORY NOTES

Prior Laws.
Former § 33-3408 was repealed. See Prior Laws, § 33-3401.

Amendments.
The 2010 amendment, by ch. 191, in the first sentence in subsection (3), deleted "/ division of children's programs" from the end.

33-3409. Rules. — The state board of education is authorized to, with the advice and recommendation of the board of directors, promulgate rules to implement the provisions of this chapter.

History.
I.C., § 33-3409, as added by 2009, ch. 168, § 4, p. 502.

STATUTORY NOTES

Prior Laws.
Former § 33-3409 was repealed. See Prior Laws, § 33-3401.

33-3410. Reporting deaf and blind pupils. — On or before the first day of February, in each year, the clerk of each school district, including

elementary school districts, charter schools designated by the state board of education to be identified as a local education agency (LEA) pursuant to section 33-5203, Idaho Code, and especially chartered school districts shall report the number of deaf and blind pupils, as defined in section 33-3402, Idaho Code, attending the school or schools of the district, and any such person, not a pupil in the school, of whom he may have knowledge. Such report shall be made to the Idaho bureau of educational services for the deaf and the blind, upon forms approved by the state board of education.

History.
I.C., § 33-3410, as added by 2009, ch. 168, § 4, p. 502.

33-3411. Acquisition of and title to property. — (1) All rights and title to property, real and personal, belonging to the state of Idaho and vested in the Idaho state board of education for use as a school for the deaf and the blind shall remain with the Idaho state board of education.

(2) The Idaho state board of education may request moneys from the permanent building fund for the construction and maintenance of buildings on land owned by the state of Idaho and used by the Idaho bureau of educational services for the deaf and the blind.

History.
I.C., § 33-3411, as added by 2009, ch. 168, § 4, p. 502; am. 2010, ch. 191, § 6, p. 405.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 191, added the subsection (1) designation and subsection (2).

33-3412. Sick leave transferred for employees of Idaho school for the deaf and the blind to Idaho bureau of educational services for the deaf and the blind. — Notwithstanding any other provision of law to the contrary, any employee of the Idaho school for the deaf and the blind who has accrued sick leave pursuant to section 67-5333, Idaho Code, and who, on or before September 1, 2009, is transferred to or otherwise becomes an eligible employee of the Idaho bureau of educational services for the deaf and the blind shall be credited by the Idaho bureau of educational services for the deaf and the blind with the amount of sick leave accrued and unused at the time of transfer. After such transfer, the use of such sick leave and the accrual of additional sick leave shall be governed by the laws, rules and policies applicable to the Idaho bureau of educational services for the deaf and the blind.

History.
I.C., § 33-3412, as added by 2009, ch. 168, § 4, p. 502.

33-3413. Sectarian tests prohibited. — No religious or sectarian

tests shall be applied to the admission of students, nor in the selection of instructors or other personnel of the school.

History.
I.C., § 33-3413, as added by 2009, ch. 168, § 4, p. 502.

33-3414. General fund contingency reserve. — The board of directors for the Idaho bureau of educational services for the deaf and the blind may create and establish a general fund contingency reserve within the annual Idaho bureau of educational services for the deaf and the blind budget. Such general fund contingency reserve shall not exceed five percent (5%) of the total general fund appropriation to the Idaho bureau of educational services for the deaf and the blind. Disbursements from this continuously appropriated fund may be made as the board of trustees determines necessary for contingencies that may arise. The balance of the contingency fund may be accumulated beyond the budgeted fiscal year, but shall never exceed five percent (5%) of the current year's appropriation to the Idaho bureau of educational services for the deaf and the blind.

History.
I.C., § 33-3414, as added by 2009, ch. 168, § 4, p. 502.

CHAPTER 37

MISCELLANEOUS PROVISIONS RELATING TO STATE INSTITUTIONS OF LEARNING

SECTION.
33-3701. Contracts for housing facilities at state institutions.
33-3717. Fees at the university of Idaho. [Repealed.]
33-3717A. Fees at state colleges and universities.
33-3717B. Residency requirements.
33-3721. Professional studies account.
33-3722. Student education incentive loan forgiveness contract. [Repealed.]
33-3723. Rural physician incentive fee assessment.
33-3724. Rural physician incentive fund. [Repealed.]
33-3725. Incentive payments from fund. [Repealed.]
33-3726. Higher education stabilization fund.
33-3727. Military education, training and service — Award of academic credit — Development of policies.

33-3701. Contracts for housing facilities at state institutions. — The state board of education and board of regents of the University of Idaho, acting as the board of regents of the University of Idaho, or as the board of trustees of the Lewis-Clark State College, or as the board of trustees of the Boise State University, or as the board of trustees of the Idaho State University are hereby authorized to enter into contracts with persons, firms and corporations, for the purpose of providing dormitory and housing facilities for the students of said institutions; for the purposes the board may contract for the leasing and purchase of lands and buildings and for the purchase and installation of fixtures, furniture, furnishings and equipment

in such buildings; the board may contract to pay as rent or otherwise a sum sufficient to pay, on the amortization plan, the principal and interest thereon, of the purchase-price of lands and buildings, such contracts to run not over twenty (20) years; the rate of interest on the principal on any purchase shall not exceed seven percent (7%) per annum payable semiannually or annually.

History.
1923, ch. 72, § 1, p. 79; am. 1929, ch. 132, § 1, p. 216; I.C.A., § 32-3201; am. 1947, ch. 99, § 13, p. 182; am. 1947, ch. 100, § 12, p. 190; am. 1947, ch. 107, § 11, p. 217; am. 1963, ch. 286, § 1, p. 752; am. 2009, ch. 11, § 10, p. 14.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 11, substituted "Lewis-Clark State College" for "Lewis-Clark Normal School" and inserted "or as the board of trustees of the Boise State University."

33-3717. Fees at the university of Idaho. [Repealed.]

Repealed by S.L. 2011, ch. 39, § 1, effective March 8, 2011.

History.
I.C., § 33-3717, as added by 2005, ch. 210, § 2, p. 626.

STATUTORY NOTES

Effective Dates.
Section 4 of S.L. 2011, ch. 39 declared an emergency. Approved March 8, 2011.

33-3717A. Fees at state colleges and universities. — (1) The state board of education and the board of regents of the university of Idaho may prescribe fees, including tuition fees, for resident and nonresident students enrolled in all state colleges and universities. For purposes of this section, said fees, including tuition fees, may be used for any and all educational costs at the state colleges and universities including, but not limited to, costs associated with:

(a) Academic services;
(b) Instruction;
(c) The construction, maintenance and operation of buildings and facilities;
(d) Student services; or
(e) Institutional support.

The state board of education also may prescribe fees for all students for any additional charges that are necessary for the proper operation of each institution.

(2) A resident student is a student who meets the residency requirements imposed by section 33-3717B, Idaho Code.

(3) Nothing contained in this section shall prevent the state board of education from waiving fees, including tuition fees, to be paid by nonresi-

dent students, as defined in section 33-3717C, Idaho Code, who are enrolled in the state colleges and universities.

(4) Nothing contained in this section shall apply to community colleges now or hereafter established pursuant to chapter 21, title 33, Idaho Code, or to postsecondary professional-technical schools now or hereafter established and not connected to or a part of a state college or university.

History.
I.C., § 33-3717A, as added by 2005, ch. 210, § 3, p. 626; am. 2011, ch. 39, § 2, p. 94.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 39, deleted "other than the university of Idaho" from the end of the section heading, and, in the first sentence of subsection (1), inserted "and the board of regents of the university of Idaho" near the beginning and deleted "other than the university of Idaho" from the end.

Effective Dates.
Section 4 of S.L. 2011, ch. 39 declared an emergency. Approved March 8, 2011.

33-3717B. Residency requirements. — (1) For any public institution of higher education in Idaho, a "resident student" is:

(a) Any student who has one (1) or more parent or parents or court-appointed guardians who are domiciled in the state of Idaho, and the parent, parents or guardians provide at least fifty percent (50%) of the student's support. Domicile, as used in this section, means that individual's true, fixed and permanent home and place of habitation. It is the place where that individual intends to remain, and to which that individual expects to return when that individual leaves without intending to establish a new domicile elsewhere. To qualify under this section, the parent, parents or guardians must have maintained a bona fide domicile in the state of Idaho for at least twelve (12) months prior to the opening day of the term for which the student matriculates.

(b) Any student, who receives less than fifty percent (50%) of the student's support from a parent, parents or legal guardians and who has continuously resided and maintained a bona fide domicile in the state of Idaho primarily for purposes other than educational for twelve (12) months next preceding the opening day of the term during which the student proposes to attend the college or university.

(c) Subject to subsection (2) of this section, any student who is a graduate of an accredited secondary school in the state of Idaho, and who matriculates at a college or university in the state of Idaho during the term immediately following such graduation regardless of the residence of the student's parent or guardian.

(d) The spouse of a person who is classified, or is eligible for classification, as a resident of the state of Idaho for the purposes of attending a college or university.

(e) A member of the armed forces of the United States who entered service as an Idaho resident and who has maintained Idaho resident status, but is not stationed within the state of Idaho on military orders.

[(]f[)] A member of the armed forces of the United States, stationed in the state of Idaho on military orders.

(g) An officer or an enlisted member of the Idaho national guard.

(h) A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of service, who at the time of separation designates the state of Idaho as his intended domicile or who has Idaho as the home of record in service and enters a college or university in the state of Idaho within one (1) year of the date of separation, or who moves to Idaho for the purpose of establishing domicile; provided however, to maintain status as a resident student, such person must actively establish domicile in Idaho within one (1) year of matriculation in a public institution of higher education in Idaho.

(i) The dependent child of a person who qualifies as a resident student under the provisions of subsection (1)(e) through (h) of this section, and who receives at least fifty percent (50%) support from such person shall also be a resident student, and shall not lose that resident status if, after he or she enters a college or university in the state of Idaho, the parent or guardian is transferred out of the state of Idaho on military orders.

(j) Any individual who has been domiciled in the state of Idaho, has qualified and would otherwise be qualified under the provisions of this statute and who is away from the state for a period of less than thirty (30) months and has not established legal residence elsewhere provided a twelve (12) month period of continuous residence has been established immediately prior to departure; provided however, time spent away from the state while enrolled in a postsecondary education program shall not be included in the thirty (30) months. Such time spent away from the state while enrolled shall include normal academic year breaks, such as summer breaks or breaks between semesters or quarters, that occur prior to the receipt of the postsecondary degree.

(k) A student who is a member of any of the following Idaho Native American Indian tribes, regardless of current domicile, shall be considered an Idaho state resident for purposes of fees or tuition at institutions of higher education: members of the following Idaho Native American Indian tribes, whose traditional and customary tribal boundaries included portions of the state of Idaho, or whose Indian tribe was granted reserved lands within the state of Idaho: (i) Coeur d'Alene tribe; (ii) Shoshone-Paiute tribes; (iii) Nez Perce tribe; (iv) Shoshone-Bannock tribes; (v) Kootenai tribe.

(2) A "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of subsection (1) of this section, and shall include:

(a) A student attending an institution in this state with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one (1) year after the completion of the semester for which such assistance is last provided.

(b) A person who is not a citizen of the United States of America, who does not have permanent or temporary resident status or does not hold "refugee-parolee" or "conditional entrant" status with the United States

immigration and naturalization service or is not otherwise permanently residing in the United States under color of the law and who does not also meet and comply with all applicable requirements of this section.

(3) The establishment of a new domicile in Idaho by a person formerly domiciled in another state has occurred if such person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to such other state or to acquire a domicile at some other place outside of Idaho. A student who is enrolled for more than eight (8) hours in any semester or quarter during a twelve (12) month period shall be presumed to be in Idaho for primarily educational purposes. Such period of enrollment shall not be counted toward the establishment of a bona fide domicile in this state unless the student proves, in fact, establishment of a bona fide domicile in this state primarily for purposes other than educational. Institutions determining whether a student is domiciled in the state of Idaho primarily for purposes other than educational shall consider, but shall not be limited to, the following factors:

(a) Any of the following, if done for at least twelve (12) months before the term in which the student proposes to enroll as a resident student, proves the establishment and maintenance of domicile in Idaho for purposes other than educational and supports classification of a student as an Idaho resident:

(i) Filing of Idaho state income tax returns covering a period of at least twelve (12) months before the term in which the student proposes to enroll as a resident student;

(ii) Permanent full-time employment or the hourly equivalent thereof in the state of Idaho; or

(iii) Ownership by the student of the student's living quarters.

(b) The following, if done for at least twelve (12) months before the term in which the student proposes to enroll as a resident student, lend support to domiciliary intent and the absence of which indicates a lack of domiciliary intent. By themselves, the following do not constitute sufficient evidence of the establishment and maintenance of a domicile in Idaho for purposes other than educational:

(i) Registration and payment of Idaho taxes or fees on a motor vehicle, mobile home, travel trailer or other item of personal property for which state registration and the payment of a state tax or fee is required;

(ii) Registration to vote for state elected officials in Idaho at a general election;

(iii) Holding an Idaho driver's license;

(iv) Evidence of abandonment of a previous domicile;

(v) Presence of household goods in Idaho;

(vi) Establishment of accounts with Idaho financial institutions; and

(vii) Other similar factors indicating intent to be domiciled in Idaho and the maintenance of such domicile.

(4) The state board of education and the board of regents of the university of Idaho shall adopt uniform and standard rules applicable to all state colleges and universities now or hereafter established to determine resident status of any student and to establish procedures for review of that status.

(5) Appeal from a final determination denying resident status may be initiated by the filing of an action in the district court of the county in which the affected college or university is located; an appeal from the district court shall lie as in all civil actions.

(6) Nothing contained herein shall prevent the state board of education and the board of regents of the university of Idaho from establishing quotas, standards for admission, standards for readmission, or other terms and requirements governing persons who are not residents for purposes of higher education.

(7) For students who apply for special graduate and professional programs including, but not limited to, the WWAMI (Washington, Wyoming, Alaska, Montana, Idaho) regional medical program, the WICHE student exchange programs, Creighton university school of dental science, the university of Utah college of medicine, and the Washington, Oregon, Idaho (WOI) regional program in veterinary medical education, no applicant shall be certified or otherwise designated as a beneficiary of such special program who has not been a resident of the state of Idaho for at least one (1) calendar year previous to the application date.

History.

I.C., § 33-3717B, as added by 2005, ch. 210, § 4, p. 626; am. 2008, ch. 66, § 2, p. 170; am. 2008, ch. 226, § 1, p. 690; am. 2009, ch. 329, § 1, p. 939; am. 2010, ch. 77, § 1, p. 126; am. 2012, ch. 21, § 1, p. 74.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 329, in subsection (1)(i), added the proviso in the first sentence and added the last sentence.

The 2010 amendment, by ch. 77, in paragraph (1)(h), in the first sentence, added the language beginning "or who moves to Idaho" through to the end and added the last sentence.

The 2012 amendment, by ch. 21, in subsection (1), added paragraph (e) and redesignated former paragraphs (e) and (f) as present paragraphs (f) and (g), deleted former paragraph (g), which read, "A student whose parent or guardian is a member of the armed forces and stationed in the state of Idaho on military orders and who receives fifty percent (50%) or more of support from parents or legal guardians. The student, while in continuous attendance, shall not lose that residence when the student's parent or guardian is transferred on military orders", designated the last sentence of paragraph (h) as paragraph (i), and rewrote that sentence, which formerly read, "The dependent of a person who qualifies as a resident student under this paragraph and who receives at least fifty percent (50%) support from such person shall also be a resident student", and redesignated former paragraphs (i) and (j) as present paragraph (j) and (k).

Compiler's Notes.

The bracketed insertions in the designation for paragraph (1)(f) were added by the compiler to supply parentheses missing from the 2012 amendatory act.

Effective Dates.

Section 2 of S.L. 2009, ch. 329 declared an emergency. Approved May 12, 2009.

33-3721. Professional studies account. — (1) There is hereby created in the dedicated fund, the professional studies account. The professional studies account shall be used to receive moneys from private contributions, from gifts and grants, from repayment of loans, and from any other source, in support of medical, dental, veterinary, or other health-related professional programs of study.

(2) Interest earned on investments from moneys in the account shall be paid to the account.

(3) All moneys in the account are hereby appropriated to the state board of education for the purposes of section 33-3720, Idaho Code.

History.
I.C., § 33-3721, as added by 1983, ch. 182, § 2, p. 494; am. 2012, ch. 26, § 1, p. 83.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 26, deleted "from state appropriations" following "used to receive moneys" in the second sentence in subsection (1).

33-3722. Student education incentive loan forgiveness contract. [Repealed.]

Repealed by S.L. 2013, ch. 72, § 1, effective July 1, 2013.

History.
I.C., § 33-3722, as added by 1988, ch. 309, § 1, p. 965; am. 1989, ch. 118, § 1, p. 264; am. 1990, ch. 28, § 1, p. 42; am. 2005, ch. 173, § 1, p. 535.

33-3723. Rural physician incentive fee assessment. — The state board of education may assess a fee to students preparing to be physicians in the fields of medicine or osteopathic medicine who are supported by the state pursuant to an interstate compact for a professional education program in those fields, as those fields are defined by the compact. The fee may not exceed an amount equal to four percent (4%) of the annual average medicine support fee paid by the state. The fee must be assessed by the board and deposited in the rural physician incentive fund established in section 39-5902, Idaho Code, to be administered by the department of health and welfare. Moneys are also payable into the fund from state appropriations, private contributions, gifts and grants and other sources. Income and earnings on the fund shall be returned to the fund. The expenses of administering the physician incentive fund portion of the fund shall not exceed ten percent (10%) of the annual fees assessed pursuant to this section.

History.
I.C., § 33-3723, as added by 2003, ch. 283, § 1, p. 767; am. 2012, ch. 44, § 1, p. 132.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 44, substituted "section 39-5902, Idaho Code, to be administered by the department of health and welfare" for "section 33-3724, Idaho Code" at the end of the third sentence and added the fourth to sixth sentences.

33-3724. Rural physician incentive fund. [Repealed.]

Repealed by S.L. 2012, ch. 44, § 2, effective July 1, 2012. For present comparable provisions, see § 39-5902 et seq.

History.
I.C., § 33-3724, as added by 2003, ch. 283, § 2, p. 767; am. 2010, ch. 240, § 1, p. 621.

33-3725. Incentive payments from fund. [Repealed.]

Repealed by S.L. 2012, ch. 44, § 3, effective July 1, 2012. For present comparable provisions, see § 39-5902 et seq.

History.
I.C., § 33-3725, as added by 2003, ch. 283, § 3, p. 767; am. 2010, ch. 240, § 2, p. 621.

33-3726. Higher education stabilization fund. — There is hereby created in the state treasury a fund to be known as the higher education stabilization fund. The higher education stabilization fund shall consist of three (3) separate accounts as follows:

(1) An account designated the strategic interest account shall consist of interest earnings from the investment of moneys deposited with the state treasurer into unrestricted current fund 0650-00, as designated by the state controller in the statewide accounting and reporting system. Annually on July 1, or as soon thereafter as is practicable, the state controller shall transfer such interest earnings to the strategic interest account. All moneys so transferred shall be expended for the maintenance, use and support of institutions that have deposited moneys into unrestricted current fund 0650-00. All such expenditures shall be subject to legislative appropriation. Institutions shall receive a pro rata share of a legislative appropriation based upon the amount of moneys any such institution has deposited into unrestricted current fund 0650-00 in the current fiscal year compared to the total amount deposited by all institutions in the current fiscal year. Interest earned from the investment of moneys in the strategic interest account shall be retained in the strategic interest account.

(2) An account designated the surplus stabilization account shall consist of any other moneys made available through legislative transfers, appropriations or otherwise provided by law, or from any other governmental source. All such moneys shall be expended for the maintenance, use and support of institutions named in section 33-3803, Idaho Code. Such expenditures shall be made subject to legislative appropriation to the state board of education for college and universities. Distribution of such moneys to institutions shall be based upon the state board of education's established practices for the allocation of moneys to such institutions. Interest earned from the investment of moneys in this surplus stabilization account shall be retained in this surplus stabilization account.

(3) An account designated the surplus stabilization account for Eastern Idaho Technical College, North Idaho College, College of Southern Idaho and College of Western Idaho shall consist of any other moneys made available through legislative transfers, appropriations or otherwise provided by law, or from any other governmental source. All such moneys shall be expended for the maintenance, use and support of Eastern Idaho Technical College, North Idaho College, College of Southern Idaho and

College of Western Idaho. Such expenditures shall be made subject to legislative appropriation to Eastern Idaho Technical College, through the appropriation to the division of professional-technical education, and to the community colleges. Distribution of such moneys shall be based upon established practices for the allocation of moneys to Eastern Idaho Technical College through the division of professional-technical education, or the state board of education's established practices for the allocation of moneys to the community colleges. Interest earned from the investment of moneys in this surplus stabilization account shall be retained in this surplus stabilization account.

History.
I.C., § 33-3726, as added by 2010, ch. 69, § 1, p. 117.

33-3727. Military education, training and service — Award of academic credit — Development of policies. — Notwithstanding the provisions of section 33-107(6)(b), Idaho Code, the state board of education, the board of regents of the university of Idaho, a board of trustees of a community college established pursuant to the provisions of section 33-2106, Idaho Code, and the state board for professional-technical education shall develop policies relating to the award of academic credit for education, training or service completed by an individual as a member of the armed forces or reserves of the United States, the national guard of any state, the military reserves of any state or the naval militia of any state, where such education, training or service is determined to satisfy such established policies. The boards shall work cooperatively with one another and with other state agencies as needed in the development of such policies. The boards are authorized to adopt rules as necessary for the administration of the provisions of this section.

History.
I.C., § 33-3727, as added by 2012, ch. 108, § 1, p. 298.

CHAPTER 39

IDAHO ARCHAEOLOGICAL SURVEY

SECTION.
33-3901. Idaho archaeological survey created — Purpose — Definition — Advisory board.
33-3902. Meetings — Office — State archaeologist.
33-3904. Reports.

33-3901. Idaho archaeological survey created — Purpose — Definition — Advisory board. — (1) There is hereby created the Idaho archaeological survey, to be administered as a special cooperative program under the authority of the board of trustees of the Idaho state historical society and the board of regents of the university of Idaho. It is the policy of the state of Idaho that the archaeological resources recovered from within the state, and their associated documentation, be accorded long-term

curation within the state to ensure their continued accessibility by the educational programs of the state universities and for the public benefit of the citizens of the state of Idaho. It is a policy of the state of Idaho that archaeological inventories conducted within the state be documented in a comprehensive database accessible by educational programs and for other public purposes consistent with the protection of these resources. The survey shall be the lead state entity for the compilation, coordination, preservation and dissemination of archaeological survey data and long-term curation of collections for Idaho. This information is to be acquired through field and laboratory investigations by the staff of the survey and through cooperative programs with other governmental and private agencies, including the educational programs at the state universities which recover, use and care for archaeological materials. Nothing in this chapter shall limit the established role of the state universities in archaeological research and educational programs using archaeological materials.

(2) For the purposes of this chapter "archaeological resources" refer to both cultural remains and associated environmental materials recovered by archaeological studies and to sites on the landscape containing materials potentially supportive of anthropological or historical archaeological studies.

(3) There is hereby established an advisory board for the survey which shall consist of the following members: the Idaho state archaeologist, who shall be director of the survey and nonvoting chairman of the advisory board, the academic vice presidents of the university of Idaho, Idaho state university and Boise state university or their designated representatives; the governor of the state of Idaho or his designated representative; and a member of the public who shall be elected by a majority vote of the advisory board and who shall serve for a term of two (2) years. Should a vacancy occur in the public member position, the advisory board shall appoint a replacement to serve the remainder of the term. Members of the advisory board shall be compensated as provided in section 59-509(b), Idaho Code, which compensation shall be paid from the archaeological survey account created in section 33-3905, Idaho Code. A quorum of the advisory board shall be required to be present to conduct business.

History.
I.C., § 33-3901, as added by 1992, ch. 116, § 1, p. 387; am. 2009, ch. 167, § 6, p. 497.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 167, in the first sentence in subsection (1), substituted "board of trustees of the Idaho state historical society" for "Idaho state board of education"; and throughout subsection (3), inserted "advisory" preceding "board".

33-3902. Meetings — Office — State archaeologist. — The advisory board shall hold annual meetings at the Idaho state historical society, the university of Idaho, Idaho state university or Boise state university on the first Monday of June of each year and shall hold such other meetings as it

may deem necessary. The chief office of the survey and the office of its secretary shall be maintained at the Idaho state historical society. The professional archaeologist holding the position of state archaeologist in the Idaho state historical society is designated director of the survey.

History.
I.C., § 33-3902, as added by 1992, ch. 116, § 1, p. 387; am. 2009, ch. 167, § 7, p. 497.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 167, inserted "advisory" near the beginning of the first sentence.

33-3904. Reports. — The Idaho archaeological survey shall annually, on or before the first day of January, make to the governor of the state and to the board of trustees of the Idaho state historical society and the board of regents of the university of Idaho a report detailing major events during the preceding year concerning the archaeological resources of the state, a report of its expenditures and of the work of the survey during the preceding year, and budget requests for the following year; and it shall make a similar report of its doings and its expenditures to the state legislature through the legislative council.

History.
I.C., § 33-3904, as added by 1992, ch. 116, § 1, p. 387; am. 2009, ch. 167, § 8, p. 497.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 167, substituted "board of trustees of the Idaho state historical society" for "executive director of the Idaho state board of education."

CHAPTER 41

INTERSTATE COMPACTS

SECTION.
33-4104. Interstate agreement on qualification of educational personnel.

33-4104. Interstate agreement on qualification of educational personnel. — The interstate agreement on qualification of educational personnel is hereby enacted into law and entered into with all jurisdictions legally joining therein as outlined in the national association of state directors of teacher education and certification (NASDTEC) interstate agreement, 2010 — 2015 in the form substantially as follows:

ARTICLE I, PURPOSE.

The purpose of this interstate agreement is to provide a mechanism to

inform the membership and the public of jurisdiction-specific requirements for educator licensure in each member jurisdiction.

ARTICLE II, ASSUMPTIONS.

(1) Education is a regulated profession.

(2) Each member jurisdiction has the authority to establish professional and ethical standards for preparation, licensure and continuing development of educators.

(3) Each member jurisdiction has the responsibility to adhere to federal requirements and guidelines regarding the qualification of educators.

(4) Understanding licensure requirements of the different member jurisdictions facilitates professional educator mobility.

(5) The term "reciprocity" is often inappropriately applied to educator mobility between member jurisdictions.

(6) As licensure criteria differ from member jurisdiction to member jurisdiction, an educator's license from one (1) member jurisdiction is not automatically "exchanged" for a license in another member jurisdiction.

(7) Minimum essential components of an approved educator preparation program are completion of a:

(a) Bachelor's degree, either prior to admission to the program or as part of the program;

(b) Supervised clinical practice; and

(c) Planned program of study.

A member jurisdiction may impose additional components to meet its own standards.

(8) Recognition of national certification of educators, for example, the national board for professional teaching standards, is at the discretion of member jurisdictions.

(9) The terms defined in this interstate agreement provide a common vocabulary, which member jurisdictions agree to use in disseminating information nationally and internationally.

(10) The interstate agreement is not intended to alter, amend or regulate individual member jurisdiction licensure requirements.

ARTICLE III, DEFINITIONS.

For purposes of this interstate agreement, the following terms are defined as:

(1) "Accredited institution" means a college or university which awards a baccalaureate or higher degree and, if located within the United States, is fully accredited by one (1) of the following regional accrediting bodies:

(a) Middle states association of colleges and schools;

(b) New England association of schools and colleges;

(c) North central association of colleges and schools;

(d) Northwest commission on colleges and universities;

(e) Southern association of colleges and schools; and

(f) Western association of schools and colleges.

If the college or university does not have regional accreditation as detailed

above, consideration of the educator for licensure is at the discretion of the member jurisdiction.

(2) "Administrator" means an educator whose primary duties may include:

(a) The supervision of programs or curriculum; or

(b) Supervision or management of a local educational agency, a school building, a school program or a school system.

(3) "Approved program" means a planned program of study leading to licensure in the appropriate member jurisdiction. Approved programs may be either traditional or nontraditional. A nontraditional program is a post-baccalaureate program in which the candidate may be employed as an educator prior to completion of the program, as defined by the United States department of education (USDOE).

Teacher	Traditional Program	Nontraditional Program
Rigorous Admission Standards	Yes	Yes, including a bachelor's degree earned prior to admission
Conferred Degree Upon Program Completion	Yes or No	Yes or No
Delivered by an Institution of Higher Education (IHE)	Yes	Yes or No
Supervised Clinical Practice	Yes	Yes, but may differ from a traditional program
May Be Employed As An Educator While Completing Program	No	Yes

Administrator	Traditional Program	Nontraditional Program
Rigorous Admission Standards	Yes, including a bachelor's degree or higher earned prior to admission	Yes, including a bachelor's degree or higher earned prior to admission
Conferred Degree Upon Program Completion	Yes or No	Yes or No
Delivered by an IHE	Yes	Yes or No
Supervised Clinical Practice	Yes	Yes, but may differ from a traditional program
May Be Employed As An Educator While Completing Program	Yes or No	Yes

A program approved in one (1) member jurisdiction may not lead to licensure in another member jurisdiction.

(4) "Educator" is categorized as a teacher, administrator or support professional who may be required by the member jurisdiction to hold a license. A member jurisdiction may recognize additional categories of licensure (e.g., career and technical educators) not addressed by this interstate agreement.

(5) "Experience" means employment and licensure as required by the member jurisdiction.

(6) "Jurisdiction-specific requirement" (JSR) means any criterion beyond

the minimum essential components required by a member jurisdiction for licensure. The following is a noninclusive list of JSRs:

(a) Grade-point average;

(b) Testing or other forms of assessment;

(c) Mentoring;

(d) Supervised and evaluated pre-service or professional experience;

(e) Course delivery methodology;

(f) Program approval comparability;

(g) Specific coursework;

(h) Valid license, as defined by the receiving member jurisdiction;

(i) Post-baccalaureate coursework or degrees;

(j) Continuing professional development;

(k) Moral fitness or character; or

(*l*) Citizenship.

(7) "Stages of administrator license" are described below and are general categories of licensure. Member jurisdictions may or may not offer these stages of licensure or require licensure to be eligible for certain school administrator work assignments.

(a) "Stage 1 administrator license" means a license issued to an individual who holds a minimum of a bachelor's degree, has met approved school administrator preparation program admission requirements, but has not met the jurisdiction-specific requirements of the issuing member jurisdiction.

(b) "Stage 2 administrator license" means a license issued to an individual who has completed an approved school administrator preparation program, but has not met the jurisdiction-specific requirements for a stage 3 license of the issuing member jurisdiction.

(c) "Stage 3 administrator license" means a license issued to an individual who holds a minimum of a master's degree and has met all jurisdiction-specific requirements for licensure, including endorsements when applicable.

(8) "Stages of teacher licensure" are described below and are general categories of licensure. Member jurisdictions may or may not have licenses available in each stage.

(a) "Stage 1 teacher license" means a license issued to an individual who holds a minimum of a bachelor's degree, has met approved teacher preparation program admission requirements, but has not met the jurisdiction-specific requirements of the issuing member jurisdiction.

(b) "Stage 2 teacher license" means a license issued to an individual who holds a minimum of a bachelor's degree, has completed an approved teacher preparation program, but has not met the jurisdiction-specific requirements for a stage 3 license of the issuing member jurisdiction.

(c) "Stage 3 teacher license" means a license issued to an individual who holds a minimum of a bachelor's degree, has completed an approved teacher preparation program and has met all jurisdiction-specific requirements of the issuing member jurisdiction.

(d) "Stage 4 teacher license" means a license issued to an individual who holds a minimum of a master's degree or the equivalent, has completed an

approved teacher preparation program and has met any jurisdiction-specific requirements beyond those required for the stage 3 license of the issuing member jurisdiction.

(9) "License" means certificate, credential or other similar term designated by the member jurisdiction.

(10) "Member jurisdiction" means an entity which is a voting member of NASDTEC.

(11) "School" means an institution, other than a home school, which offers instruction for students of any grade, from birth through grade 12, which satisfies the compulsory attendance requirements of the member jurisdiction in which the institution is located.

(12) "Support professional" means a person other than a teacher or administrator who is required to hold an educator license based upon at least a bachelor's degree.

(13) "Teacher" means a person whose primary responsibility is to instruct students or as otherwise defined by the member jurisdiction.

ARTICLE IV, DUTIES OF MEMBER JURISDICTIONS.

In signing this interstate agreement, member jurisdictions agree to:

(1) Adopt and enforce quality standards for approved programs;

(2) Maintain and publish a current listing of programs approved within the member jurisdiction;

(3) Apply jurisdiction-specific requirements equitably to applicants completing approved programs in any other member jurisdiction;

(4) Agree in principle to the "Assumptions" set forth in this interstate agreement;

(5) Agree in principle to the "Minimum Essential Components";

(6) In addition to signing the NASDTEC "Interstate Agreement for Educator Licensure," each member jurisdiction signs the NASDTEC "Educator Information Clearinghouse Agreement" agreeing to notify the NASDTEC "Educator Information Clearinghouse" immediately upon denial, suspension, revocation or surrender of an educator's license for reasons other than failing to meet academic requirements.

ARTICLE V, PROCEDURE FOR MEMBER PARTICIPATION.

(1) Each member jurisdiction shall complete a jurisdiction-specific requirement (JSR) index for each educator category in the form and time frame as directed by the NASDTEC executive director.

(2) Each member jurisdiction shall revise the jurisdiction-specific requirement (JSR) index immediately in the event that its licensure criteria are amended or modified.

(3) The NASDTEC executive director shall compile a master index reflecting all member jurisdiction's jurisdiction-specific requirements for distribution and for posting on the NASDTEC website.

ARTICLE VI, DURATION OF THE INTERSTATE AGREEMENT.

(1) This interstate agreement shall have duration until September 30 of each year ending in a five (5) or a zero (0), unless terminated as provided

below. The interstate agreement shall be automatically renewed in the then-current format for each subsequent five (5) year period unless written notice of intent not to renew is given to the executive director of NASDTEC by July 1 of the final year of an interstate agreement period.

(2) A member jurisdiction may withdraw from the interstate agreement upon one (1) year's written notice to the executive director of NASDTEC, who shall in turn notify all other affected member jurisdictions. It shall be incumbent upon the executive director to notify other member jurisdictions.

ARTICLE VII, MISCELLANEOUS TERMS.

(1) The NASDTEC executive board, by and through the chair of the NASDTEC interstate agreement committee, shall be responsible for administration and interpretation of this interstate agreement.

(2) NASDTEC recognizes the fluidity of educator preparation and licensure laws, regulations and policies in member jurisdictions. It is NASDTEC's intent to maintain the jurisdiction-specific requirements (JSRs) index as a current and accurate reflection of each member jurisdiction's requirements. However, circumstances beyond the control of NASDTEC may, on occasion, inhibit the accuracy of the master index. Accordingly, it is recommended that users of the JSR index refer to member jurisdictions' websites to confirm specific requirements. Further, it is understood that this interstate agreement and the JSR index are provided to facilitate the exchange of information and are not intended to supplant or supersede individual jurisdiction's authority.

ARTICLE VIII, MEMBER JURISDICTION-SPECIFIC LICENSURE REQUIREMENTS.

Driven by the "Assumptions" identified in Article II of this document, as of October 2010, NASDTEC member jurisdictions recognize the complex nature of the interstate agreement and the public's need for clear, accurate information when moving from one (1) member jurisdiction to another. Member jurisdictions agree to make "Levels of Licensure" and jurisdiction-specific requirements (JSRs) clear to each other and the public by completing and maintaining the JSR index. This index is intended to provide information to anyone seeking educator licensure in a member jurisdiction, whether prepared through a traditional or nontraditional pathway. It identifies specific requirements beyond the NASDTEC-identified "Minimum Essential Components" for educator preparation. A member jurisdiction's laws and regulations in place at the time of application for licensure supersede information provided here.

History.
1969, ch. 194, § 1, p. 565; am. 2012, ch. 37, § 1, p. 108.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 37, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.
As of June, 2013, over 35 states had adopted this interstate agreement.

CHAPTER 43
SCHOLARSHIPS

SECTION.
33-4301. Short title.
33-4302. Armed forces and public safety officer scholarships.
33-4302A. Public safety officer scholarships — State aid. [Repealed.]
33-4303. Short title. [Effective until July 1, 2014.]
SECTION.
33-4303. Idaho opportunity scholarship. [Effective July 1, 2014.]
[33-4303A] 33-4304. Scholarship program reporting requirements.

33-4301. Short title. — This act may be cited as "The Scholarships and State Aid Act."

History.
1972, ch. 393, § 1, p. 1136; am. 2013, ch. 72, § 2, p. 183.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 72, substituted "Scholarships and State Aid Act" for "POW/MIA Scholarship Act of 1972."

Effective Dates.
Section 11 of S.L. 2013, ch. 72 provided: "Sections 5, 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2 [this section], 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013."

33-4302. Armed forces and public safety officer scholarships. — (1) The following individuals shall be eligible for the scholarship program provided for herein:

(a) Any spouse or child of any Idaho citizen who, while such person is or was a resident of the state of Idaho, has been determined by the federal government to be a prisoner of war or missing in action; or to have died of, or become totally and permanently disabled by, injuries or wounds sustained in action in any area of armed conflict in which the United States is a party; and

(b) Any spouse or child of any member of the armed forces of the United States who is stationed in the state of Idaho on military orders and who is deployed from the state of Idaho to any area of armed conflict in which the United States is a party and who has been determined by the federal government to be a prisoner of war or missing in action; or to have died of, or become totally and permanently disabled by, injuries or wounds sustained in action as a result of such deployment.

(c) Any spouse or child of a full-time or part-time public safety officer, as defined in subsection (d) of this section, employed by or volunteering for

the state of Idaho or for a political subdivision of the state of Idaho, which public safety officer is or was a resident of the state of Idaho at the time such officer was killed or totally and permanently disabled in the line of duty. The death or disability shall have occurred on or after January 1, 1975. The scholarship provided for in this section shall not be available unless it is determined that:

(i) The death or disablement of the public safety officer occurred in the performance of the officer's duties;

(ii) The death or disablement was not caused by the intentional misconduct of the public safety officer or by such officer's intentional infliction of injury; and

(iii) The public safety officer was not voluntarily intoxicated at the time of death.

(d) For purposes of this section the following terms have the following meanings:

(i) "Public safety officer" means a peace officer or firefighter, a paramedic or emergency medical technician as those terms are defined in section 56-1012, Idaho Code.

(ii) "Volunteering" means contributing services as a bona fide member of a legally organized law enforcement agency, fire department or licensed emergency medical service provider organization.

(2)(a) To be eligible for the scholarship provided for herein, a child of a military member or a public safety officer must be a resident of the state of Idaho and must have completed secondary school or its equivalent in the state of Idaho. A child already born, or born after a military member or public safety officer is determined to be imprisoned or missing in action, or is killed or becomes totally and permanently disabled, shall be eligible for this scholarship;

(b) To be eligible for the scholarship provided for herein, the spouse of a military member or public safety officer must be a resident of the state of Idaho and must have been married to such person at the time the military member or public safety officer was determined to be imprisoned or missing in action, or was killed or became totally and permanently disabled. Provided however, that in the situation of disability, the spouse must be currently married to such person.

(3) An eligible individual who applies for the scholarship provided for herein shall, after verification of eligibility, receive the scholarship and be admitted to attend undergraduate studies at any public institution of higher education or public professional-technical college within the state of Idaho without the necessity of paying tuition and fees therefor; such student shall be provided with books, equipment and supplies necessary for pursuit of such program of enrollment not to exceed five hundred dollars ($500) per quarter, semester, intensified semester, or like educational period; such student shall be furnished on-campus housing and subsistence for each month he or she is enrolled full-time under this program and actually resides in such on-campus facility; provided however, that such undergraduate educational benefits shall not exceed a total of thirty-six (36) months or four (4) nine (9) month periods. Provided further, that the initiation of such

educational benefits shall extend for a period of ten (10) years after achieving a high school diploma or its equivalency, or for a period of ten (10) years after the event giving rise to the eligibility for the scholarship, whichever is longer.

(4) The eligible individual shall meet such other educational qualifications as such institution of higher education or professional-technical college has established for other prospective students of this state, as well as any additional educational qualifications established by the state board of education and board of regents of the university of Idaho.

(5) Application for eligibility under this section shall be made to the state board of education and the board of regents of the university of Idaho or the state board of vocational-technical education. The board shall verify the eligibility of the applicant and communicate such eligibility to such person and the affected institution or college.

(6) Affected institutions shall in their preparation of future budgets include therein costs resultant from such tuition, fee, book, equipment, supply, housing and subsistence loss for reimbursement thereof from appropriations of state funds.

(7) For the purposes of this section, a member of the armed forces of the United States is considered totally and permanently disabled if at the time of application a current disability determination made by the United States social security administration is in effect with respect to such individual.

(8) The state board of education and board of regents of the university of Idaho may adopt rules to implement and administer the scholarship program provided for in this section.

History.

1972, ch. 393, § 2, p. 1136; am. 1991, ch. 90, § 1, p. 204; am. 1999, ch. 329, § 36, p. 852; am. 2002, ch. 276, § 1, p. 809; am. 2005, ch. 326, § 1, p. 1017; am. 2007, ch. 95, § 1, p. 277; am. 2008, ch. 185, § 1, p. 557; am. 2012, ch. 178, § 1, p. 467; am. 2013, ch. 72, § 3, p. 183.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 178, rewrote this section, adding subsections (2) and (8), deleting former subsection (6), relating to duties of the applicants for the scholarship program, and renumbering the other subsections accordingly.

The 2013 amendment, by ch. 72, substituted the present section heading for "Scholarships — State aid"; inserted paragraphs (1)(c) and (1)(d); and inserted "or public safety officer" three times in subsection (2).

Effective Dates.

Section 11 of S.L. 2013, ch. 72 provided: "Sections 5, 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3 [this section], 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013."

33-4302A. Public safety officer scholarships — State aid. [Repealed.]

Repealed by S.L. 2013, ch. 72, § 4, effective July 1, 2013.

History.

I.C., § 33-4302A, as added by 1993, ch. 346, § 1, p. 1288; am. 1994, ch. 417, § 1, p. 1307; am. 1999, ch. 329, § 37, p. 852; am. 1999, ch. 369, § 1, p. 975; am. 2002, ch. 283, § 1, p. 825; am. 2012, ch. 178, § 2, p. 467.

33-4303. Short title. [Effective until July 1, 2014.] — The scholarship program provided for in sections 33-4303 through 33-4315, Idaho Code, shall be known and cited as the "Idaho Robert R. Lee Promise Scholarship Program."

History.
1974, ch. 87, § 1, p. 1178; am. 2000, ch. 206, § 1, p. 515; am. 2003, ch. 214, § 1, p. 561.

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 5, at which time a new § 33-4303 is enacted.

Compiler's Notes.
For this section as effective July 1, 2014, see the following section, also numbered § 33-4303.

33-4303. Idaho opportunity scholarship. [Effective July 1, 2014.] — (1) The purposes of this section are to:

(a) Recognize that all Idaho citizens benefit from an educated citizenry;

(b) Increase individual economic vitality and improve the overall quality of life for many of Idaho's citizens;

(c) Provide access to eligible Idaho postsecondary education through funding to remove financial barriers;

(d) Increase the opportunity for economically disadvantaged Idaho students; and

(e) Incentivize students to complete a postsecondary education degree or certificate.

(2) For the purposes of this section the following definitions shall apply:

(a) "Educational costs" means the dollar amount determined annually by the state board of education as necessary for student tuition, fees, books and such other expenses reasonably related to attendance at an eligible Idaho postsecondary educational institution.

(b) "Eligible Idaho postsecondary educational institution" means: A public postsecondary organization governed or supervised by the state board, the board of regents of the university of Idaho, a board of trustees of a community college established pursuant to the provisions of chapter 21, title 33, Idaho Code, or the state board for professional-technical education or any educational organization located in Idaho that is:

(i) Operated privately;

(ii) Classified as not-for-profit under state law;

(iii) Under the control of an independent board and not directly controlled or administered by a public or political subdivision; and

(iv) Accredited by an organization recognized by the state board as provided in section 33-2402, Idaho Code.

(c) "Eligible student" means a student who:

(i) Is an Idaho resident as defined in section 33-3717B, Idaho Code;

(ii) Has or will graduate from an accredited high school or its equivalent in Idaho as determined by the state board;

(iii) Has enrolled or applied to an eligible Idaho postsecondary educational institution;

(iv) Is a postsecondary undergraduate student who has not previously completed a baccalaureate (bachelor's) degree or higher; and

(v) Meets need and merit criteria as set by the state board.

"Eligible student" also means a student who has met the eligibility requirements and was awarded an opportunity scholarship prior to June 30, 2014. Continued eligibility shall be based upon the eligibility requirements at the time of the original award.

(d) "Opportunity scholarship program" means the scholarship program described in this section and in the rules established by the state board.

(e) "Shared model of responsibility" means a model set by the board to determine the required and expected contributions of the student, the student's family and available federal financial aid.

(f) "State board" means the state board of education.

(3) The state board shall promulgate rules to determine student eligibility, academic and financial eligibility, a process for eligible students to apply, amount of awards, how eligible students will be selected and when the awards shall be made, as well as other rules necessary for the administration of this section.

(4) An eligible student must:

(a) Apply or have applied for federal student financial assistance available to an eligible student who will attend or is enrolled in an eligible Idaho postsecondary educational institution; and

(b) Meet need and merit criteria established by the state board in rule.

(5) Funds that are available for the opportunity scholarship program shall be used to provide scholarships based upon a shared model of responsibility between the scholarship recipient and the recipient's family, the federal government and the participating eligible Idaho postsecondary educational institution that the recipient attends for covering the educational costs.

(6) The opportunity scholarship award shall not exceed the actual educational costs at the eligible Idaho postsecondary educational institution that the student attends. The amount of scholarship shall not exceed the educational costs established by the state board.

(7) Award payments shall be made annually to an eligible Idaho postsecondary educational institution. In no instance may the entire amount of an award be paid to or on behalf of such student in advance.

(8) If an eligible student becomes ineligible for a scholarship under the provisions of this chapter, or if a student discontinues attendance before the end of any semester, quarter, term or equivalent, covered by the award after receiving payment under this chapter, the eligible Idaho postsecondary educational institution shall remit, up to the amount of any payments made under this program, any prorated tuition or fee balances to the state board.

(9) There is hereby created an account in the state treasury to be designated the opportunity scholarship program account.

(a) The account shall consist of moneys appropriated to the account by the legislature, moneys contributed to the account from other sources and the earnings on such moneys. The executive director of the state board may receive on behalf of the state board any moneys or real or personal

property donated, bequeathed, devised or conditionally granted to the state board for purposes of providing funding for such account. Moneys received directly or derived from the sale of such property shall be deposited by the state treasurer in the account.

(b) Earnings from moneys in the account or specified gifts shall be distributed annually to the state board to implement the opportunity scholarship program as provided for under the provisions of this chapter.

(c) All moneys placed in the account and earnings thereon are hereby perpetually appropriated to the state board for the purpose described in subsection (9)(b) of this section. All expenditures from the account shall be paid out in warrants drawn by the state controller upon presentation of the proper vouchers. Up to fifty thousand dollars ($50,000) of the annual earnings distribution to the state board may be used by the state board annually for administrative costs related to the implementation of the provisions of this chapter.

(d) Allowable administrative costs include, but are not limited to, operating expenses for the implementation and maintenance of a database, operating expenses to administer the program, personnel costs necessary to administer the program and costs related to promoting awareness of the program.

(e) Any unused annual funds shall be deposited into the opportunity scholarship program account.

(f) Pending use, surplus moneys in the account shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code. Interest earned on the investments shall be returned to the account.

(10) The effectiveness of the Idaho opportunity scholarship will be evaluated by the state board on a regular basis. This evaluation will include annual data collection as well as longer-term evaluations.

History.
I.C., § 33-4303, as added by 2013, ch. 72, § 6, p. 183.

STATUTORY NOTES

Compiler's Notes.
For this section as effective until July 1, 2014, see the preceding section, also numbered § 33-4304.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.
Section 11 of S.L. 2013, ch. 72 provided: "Sections 5, 6 [this section], 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013."

33-4304. Public policy. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 5.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5 [repealing this section], 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

[33-4303A] 33-4304. Scholarship program reporting requirements. — All eligible institutions participating in the scholarships and state aid programs shall report student level data on the effectiveness of the program. The data reported shall be established by the state board of education.

History.
I.C., § 33-4304, as added by 2013, ch. 72, § 7, p. 183.

STATUTORY NOTES

Compiler's Notes.
This section was enacted by S.L. 2013, ch. 72 as § 33-4304, but has been redesignated through the use of brackets, as § 33-4304A to place it adjacent to § 33-4303, also enacted by S.L. 2013, ch. 72.

Effective Dates.
Section 11 of S.L. 2013, ch. 72 provided: "Sections 5, 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 [this section] and 10 of this act shall be in full force and effect on and after July 1, 2013."

33-4305. Purposes. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 5.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5 [repealing this section], 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4306. Definitions. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 5.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5 [repealing this section], 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4307. Eligibility — Maximum amounts — Conditions. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 5.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5 [repealing this section], 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4308. Maximum number of grants. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 5.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5 [repealing this section], 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4309. Remittance in case of discontinued attendance. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 5.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5 [repealing this section], 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4310. Discrimination prohibited. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 5.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5 [repealing this section], 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4311. Certifications of enrollment and termination of attendance of grant recipients. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 5.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5 [repealing this section], 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4312. State board of education and board of regents of University of Idaho as administrative agency. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 5.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5 [repealing this section], 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4313. Duties of board. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 5.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5 [repealing this section], 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4314. Appointment of administrator and staff. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 5.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5 [repealing this section], 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4315. No control of nonpublic institutions which accept grant recipients. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 5.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5 [repealing this section], 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

CHAPTER 44

IDAHO WORK STUDY PROGRAM

SECTION.
33-4407. Eligible types of employment.

33-4407. Eligible types of employment. — Students may be employed either on-campus or off-campus at eligible accredited institutions of higher education, subject to the limitations expressed in this chapter. Employing organizations and agencies must be responsible and must have professional supervision. Discrimination by employers on the bases of sex, race, color, age, religion, national origin, marital status or disability is prohibited.

Generally, employment which is allowable under the federal college work study program is also allowable under the Idaho program. This applies to both on-campus and off-campus employment, except that off-campus jobs for the program must be within Idaho. Likewise, employment which is not allowable under federal regulations is not eligible under the Idaho program.

Opinions from federal officials as to the legitimacy of a particular job under the federal college work study program may be assumed to be applicable to the Idaho program. However, approval to use Idaho program funds for particular jobs should not be construed as permission to institutions to use federal work-study funds to employ students in such jobs.

The financial aid office at the institution is responsible for ensuring that disbursements are made only for work performed in accordance with the written job description, with adequate supervision, and with proper documentation for the hours worked.

History.
I.C., § 33-4407, as added by 1989, ch. 124, § 1, p. 273; am. 1990, ch. 95, § 5, p. 198; am. 2010, ch. 235, § 17, p. 542.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 235, substituted "national origin, marital status or disability is prohibited" for "natural origin, marital status, or handicap is prohibited" in the first paragraph.

CHAPTER 46

IDAHO MINORITY AND "AT-RISK" STUDENT SCHOLARSHIP ACT [REPEALED EFFECTIVE JULY 1, 2014]

SECTION.
33-4604. Definitions. [Repealed effective July 1, 2014.]

33-4601. Short title. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 8.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 [repealing this section] and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4602. Public policy. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 8.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 [repealing this section] and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4603. Purposes. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 8.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 [repealing this section] and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4604. Definitions. [Repealed effective July 1, 2014.] — As used in this chapter:

(1) "At-risk person" means any Idaho resident who meets three (3) or more of the following five (5) criteria:

(a) Is a potential first-generation college student;

(b) Is an individual with a disability as defined in 29 U.S.C. section 705;

(c) Is a migrant farmworker or other seasonal farmworker or a dependent of a migrant farmworker or other seasonal farmworker;

(d) Is a minority person as defined in this chapter; or

(e) Has financial need as defined in this chapter.

(2) "Board" means the state board of education and the board of regents of the university of Idaho.

(3) "Eligible student" means any graduate of an accredited Idaho secondary school who is an at-risk person as defined in this chapter and who declares his intention to matriculate in an eligible postsecondary institution in the state of Idaho during the education year immediately following application for an award under this program.

(4) "Farmwork" means any agricultural activity, performed for either wages or personal subsistence, on a farm, ranch or similar establishment.

(5) "Financial need" means the extent of a person's inability to meet the institutionally defined cost of education at an eligible postsecondary institution through parent, family and/or personal resources as determined under rules to be established by the state board of education.

(6) "Migrant farmworker" means a seasonal farmworker whose employment required travel that precluded the farmworker from returning to his permanent place of residence within the same day.

(7) "Minority person" means any Idaho resident who is a member of an ethnic group whose members historically have participated in postsecondary education at a rate lower than their occurrence in the population of the United States including, but not limited to, persons of native American, African-American, and Hispanic-American descent.

(8) "Potential first-generation college student" means a person neither of whose parents received a bachelor's degree.

(9) "Seasonal farmworker" means a person who, within the past twenty-four (24) months, was employed for at least seventy-five (75) days in farmwork, and whose primary employment was in farmwork on a temporary or seasonal basis (that is, not as a constant year-round activity).

All terms not specifically defined in this chapter shall be defined as in sections 33-4303 through 33-4315, Idaho Code, governing the state of Idaho scholarship program.

History.

I.C., § 33-4604, as added by 1991, ch. 60, § 1, p. 137; am. 2010, ch. 235, § 18, p. 542.

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 8.

Amendments.

The 2010 amendment, by ch. 235, rewrote paragraph (1)(b), which formerly read: "Is handicapped as defined in section 504 of the rehabilitation act, 29 U.S.C. section 794"; and in subsection (7), substituted "African-American" for "Afro-American."

Effective Dates.

Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 [repealing this section] and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4605. Eligibility — Maximum amounts — Conditions. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 8.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 [repealing this section] and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4606. Duties of board. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 8.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 [repealing this section] and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4607. Duties of participating institutions. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 8.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 [repealing this section] and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

33-4608. Relationship of chapter to section 67-5909, Idaho Code. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 8.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 [repealing this section] and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013"

CHAPTER 48

IDAHO EDUCATIONAL TECHNOLOGY INITIATIVE

SECTION.
33-4802. Findings.
33-4803. Definitions.
33-4804. Public school technology grants.
33-4805. Evaluations and audits.
33-4806, 33-4807. [Amended and Redesignated.]
SECTION.
33-4809. Higher education information technology committee. [Repealed.]
33-4810. Public education information technology committee. [Repealed.]
33-4811. Technology pilot projects. [Repealed effective July 1, 2014.]

33-4802. Findings. — The legislature hereby finds, determines and declares that the state of Idaho recognizes the importance of applying technology to meet the public need for an improved, thorough and seamless public education system for elementary and secondary education, education of the hearing or visually impaired, postsecondary and higher education and public libraries.

History.
I.C., § 33-4802, as added by 1994, ch. 229, § 1, p. 716; am. 1998, ch. 40, § 1, p. 172; am. 1999, ch. 327, § 1, p. 835; am. 2009, ch. 168, § 5, p. 502.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 168, deleted "at the Idaho school for the deaf and blind" following "visually impaired."

33-4803. Definitions. — As used in this chapter:

(1) "Educational segments" are, individually, the public elementary and secondary school system, the Idaho bureau of educational services for the deaf and the blind, the professional-technical education system, the commission for libraries, the state historical society, Idaho public television, the community colleges, the four-year colleges and universities, the state department of education and the office of the state board of education.

(2) "Libraries" means district, city, school/community libraries, and the commission for libraries as described in chapters 25, 26 and 27, title 33, Idaho Code.

(3) "Technology" means all present and future forms of computer hardware, computer software and services used or required for automated data processing, computer-related office automation or telecommunications.

(4) "Telecommunications" means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images over a distance.

History.
I.C., § 33-4803, as added by 1994, ch. 229, § 1, p. 716; am. 1998, ch. 40, § 2, p. 172; am. 1999, ch. 327, § 2, p. 835; am. 1999, ch. 329, § 22, p. 852; am. 2006, ch. 235, § 30, p. 701; am. 2009, ch. 168, § 6, p. 502.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 168, substituted "the Idaho bureau of educational services for the deaf and the blind" for "the Idaho

school for the deaf and blind" in subsection (1).

33-4804. Public school technology grants. — There is hereby established the public school technology grant program, to be implemented by the state department of education, which shall make available grants for schools to provide Idaho classrooms, including classrooms at the Idaho bureau of educational services for the deaf and the blind, with the equipment and resources necessary to integrate information age technology with instruction and to further connect those classrooms with external telecommunications services. Grant applications shall include a project plan that describes proposed equipment and software purchases; how the proposed equipment and software will be used effectively in the classroom; provision for training teachers to make optimal use of the technology; and provision for local matching funds as prescribed.

History.
I.C., § 33-4806, as added by 1994, ch. 229, § 1, p. 716; am. 1998, ch. 40, § 3, p. 172; am. and redesig. 2009, ch. 27, § 2, p. 79; am. 2009, ch. 168, § 7, p. 502.

STATUTORY NOTES

Prior Laws.
Former § 33-4804, which comprised I.C., § 33-4804, as added by 1994, ch. 229, § 1, p. 716; am. 1999, ch. 327, § 3, p. 835, was repealed by S.L. 2009, ch. 27, § 1.

Amendments.
This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 27, redesignated this section from section 33-4806; in the first sentence, inserted "to be implemented by the state department of education" and substituted "Idaho school for the deaf and the blind" for "Idaho school for the deaf and blind"; and, in the last sentence, deleted "by the council; and other elements as prescribed by the council" from the end.

The 2009 amendment, by ch. 168, substituted "the Idaho bureau of educational services for the deaf and the blind" for "the Idaho school for the deaf and blind" in the first sentence.

33-4805. Evaluations and audits. — The legislative services office shall, from time to time as directed by the legislature, evaluate and audit the relative impact, costs and benefits of each of the educational technology programs conducted pursuant to this chapter. The state department of education shall report to the legislature and the governor each year on or before October 1 as to the relative impact, cost and benefit of the educational technology program conducted pursuant to this chapter.

History.
I.C., § 33-4807, as added by 1994, ch. 229, § 1, p. 716; am. 1996, ch. 45, § 1, p. 118; am. 1999, ch. 327, § 5, p. 835; am. and redesig. 2009, ch. 27, § 3, p. 79.

STATUTORY NOTES

Compiler's Notes.
Former § 33-4805, which comprised I.C., § 33-4805, as added by 1994, ch. 229, § 1, p. 716; am. 1999, ch. 327, § 4, p. 835, was repealed by S.L. 2009, ch. 27, § 1.

Amendments.
The 2009 amendment, by ch. 27, redesignated this section from section 33-4807 and substituted "department" for "board" in the last sentence.

33-4806. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.
Former § 33-4806 was amended and redesignated as § 33-4804 by S.L. 2009, ch. 27, § 2.

33-4807. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.
Former § 33-4807 was amended and redesignated as § 33-4805 by S.L. 2009, ch. 27, § 2.

33-4809. Higher education information technology committee. [Repealed.]

STATUTORY NOTES

Compiler's Notes.
This section, which comprised I.C., § 33-4809, as added by 1999, ch. 327, § 6, p. 835, was repealed by S.L. 2009, ch. 27, § 4.

33-4810. Public education information technology committee. [Repealed.]

STATUTORY NOTES

Compiler's Notes.
This section, which comprised I.C., § 33-4810, as added by 1999, ch. 327, § 7, p. 835, was repealed by S.L. 2009, ch. 27, § 4.

33-4811. Technology pilot projects. [Repealed effective July 1, 2014.] — Of amounts appropriated for the educational support program, funding shall be made available to public schools and public charter schools in multiple school districts for grants of one (1) to two (2) years in duration for technology pilot projects designed to improve student academic growth. Funds shall be distributed based upon a competitive grant process prescribed by the superintendent of public instruction. The amount of funds allocated to a public school or public charter school shall not be based upon average daily attendance or other enrollment-driven metrics. Grant applications shall include, but not be limited to, historical growth measures and expected increases through implementation of this technology. The grantees shall be required to report annually to the state department of education on the uses of funds received and the student growth results from those uses. The superintendent shall report to the legislature on the results of these efforts by December 31, 2014.

History.
I.C., § 33-4811, as added by 2013, ch. 338, § 6, p. 877.

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 338, § 7.

CHAPTER 49

MOTORCYCLE SAFETY PROGRAM

SECTION.
33-4901. Cooperation.
33-4902. Motorcycle safety program.
33-4903. Implementing authority.
33-4904. Motorcycle safety program fund.
33-4905. Advisory committee.
33-4906. Annual report on the program.

33-4901. Cooperation. — In conjunction with its supervision of traffic on public highways, the Idaho transportation department is directed to cooperate with the division of professional-technical education in its establishment of a motorcycle rider safety program for the state of Idaho.

History.
I.C., § 33-4801, as added by 1994, ch. 234, § 10, p. 728; am. and redesig. 2005, ch. 25, § 51, p. 82; am. 2009, ch. 30, § 1, p. 82.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 29, in the section catchline, deleted "between departments" from the end; and, in text, substituted "division of professional-technical education" for "department of education."

33-4902. Motorcycle safety program. — (1) The division of professional-technical education shall develop standards for, establish and administer the Idaho motorcycle safety program.

(2) The division of professional-technical education shall establish standards for the motorcycle rider training course, including standards for course curriculum and student evaluation and testing, and shall meet or exceed established national standards for motorcycle rider training courses in effect as of September 1, 1994.

(3) The program shall include activities to increase motorcyclists' alcohol and drug effects awareness, motorcycle rider improvement efforts, program promotion activities, and other efforts to enhance motorcycle safety through education, including enhancement of public awareness of motorcycles.

(4) The administrator of the division of professional-technical education shall appoint a program coordinator to oversee and direct the program.

(5) The division of professional-technical education shall establish standards for the training and approval of motorcycle rider training instructors and skills examiners which shall meet or exceed established national standards for such instructors and skills examiners in effect as of September 1, 1994.

History.
I.C., § 33-4802, as added by 1994, ch. 234, § 10, p. 728; am. and redesig. 2005, ch. 25, § 52, p. 82; am. 2009, ch. 30, § 2, p. 82.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 30, throughout the section, substituted "division of professional-technical education" for "department of education"; and, in subsection (4), substituted "administrator of the division of professional-technical education" for "superintendent of public instruction."

33-4903. Implementing authority. — (1) The state board for professional-technical education shall adopt rules which are necessary to carry out the motorcycle safety program.

(2) The division of professional-technical education may enter into contracts with public or private entities for course delivery and for the provision of services or materials necessary for administration and implementation of the program.

(3) The division of professional-technical education may offer motorcycle rider training courses directly and may approve courses offered by public or private entities as authorized program courses if they are administered and taught in full compliance with standards established for the state program.

(4) The division of professional-technical education may establish reasonable enrollment fees to be charged for persons who participate in a motorcycle rider training course.

(5) The division of professional-technical education may utilize available program funds to defray expenses in offering motorcycle rider training courses and may reimburse entities which offer approved courses for the expenses incurred in offering the courses in order to minimize any course enrollment fee charged to the students.

History.
I.C., § 33-4803, as added by 1994, ch. 234, § 10, p. 728; am. and redesig. 2005, ch. 25, § 53, p. 82; am. 2009, ch. 30, § 3, p. 82.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 30, throughout the section, substituted "division of professional-technical education" for "department of education"; and, in subsection (1), substituted "state board for professional-technical education" for "department of education."

33-4904. Motorcycle safety program fund. — (1) The motorcycle safety program fund is established in the state treasury and appropriated on a continual basis to the division of professional-technical education which shall administer the moneys. Money in the fund shall only be used for administration and implementation of the program, including reimbursement of entities which offer approved motorcycle rider training courses.

(2) At the end of each fiscal year, moneys remaining in the motorcycle safety program fund shall be retained in said fund and shall not revert to any other general fund. The interest and income earned on money in the fund, after deducting any applicable charges, shall be credited to and remain in the motorcycle safety program fund.

(3) Revenue credited to the fund shall include one dollar ($1.00) of each fee for a class A, B, C or D driver's license as provided in section 49-306, Idaho Code.

(4) Revenue credited to the fund shall include amounts collected for each motorcycle safety program fee imposed pursuant to section 49-453, Idaho Code.

History.
I.C., § 33-4804, as added by 1994, ch. 234, § 10, p. 728; am. and redesig. 1998, ch. 110, § 4, p. 375; am. 1999, ch. 81, § 1, p. 237; am. 2005, ch. 308, § 1, p. 960; am. 2009, ch. 30, § 4, p. 82.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 30, substituted "division of professional-technical education" for "department of education" in subsection (1).

33-4905. Advisory committee. — The administrator of the division of professional-technical education shall establish a program advisory committee consisting of five (5) persons representing various interests in motorcycle safety including, but not limited to, motorcycle riding enthusiasts, dealers and law enforcement personnel. Committee members shall advise the program coordinator in developing, establishing and maintaining the program. The committee shall monitor program implementation and report to the administrator as necessary with recommendations. Members of the committee shall serve without compensation but may be reimbursed for their reasonable expenses while engaged in committee business.

History.
I.C., § 33-4805, as added by 1994, ch. 234, § 10, p. 728; am. and redesig. 2005, ch. 25, § 54, p. 82; am. 2009, ch. 30, § 5, p. 82.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 30, in the first sentence, substituted "administrator of the division of professional-technical education" for "superintendent of public instruction"; and, in the next-to-last sentence, substituted "administrator" for "superintendent."

33-4906. Annual report on the program. — The division of professional-technical education shall prepare a public report annually. The report shall be completed with the assistance of the program coordinator and the program advisory committee. The report shall include the number and location of various courses offered, the number of instructors approved, the number of students trained in various courses, other information about program implementation as deemed appropriate, and an assessment of the overall impact of the program on motorcycle safety in the state. The report shall also provide a complete accounting of revenue receipts of the motorcycle safety program fund and of all moneys expended under the program.

History.
I.C., § 33-4806, as added by 1994, ch. 234, § 10, p. 728; am. and redesig. 2005, ch. 25, § 55, p. 82; am. 2009, ch. 30, § 6, p. 82.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 30, substituted "division of professional-technical education" for "department of education" in the first sentence.

CHAPTER 50

UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

SECTION.
33-5004. Appropriation for expenditure or accumulation of endowment fund — Rules of construction.

33-5004. Appropriation for expenditure or accumulation of endowment fund — Rules of construction. — (1) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(a) The duration and preservation of the endowment fund;

(b) The purposes of the institution and the endowment fund;

(c) General economic conditions;

(d) The possible effect of inflation or deflation;

(e) The expected total return from income and the appreciation of investments;

(f) Other resources of the institution; and

(g) The investment policy of the institution.

(2) Subject to the provisions of subsection (3) of this section, to limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section, a gift instrument must specifically state the limitation.

(3) Terms in a gift instrument designating a gift as an endowment, or any general or specific direction or authorization in the gift instrument to use only "income," "interest," "dividends" or "rents, issues or profits," or "to preserve the principal intact," or words of similar import, or any direction in such gift instrument relating to measuring permitted distributions to permitted payees by reference to certain types or classes of investment returns, or allocation in such gift instrument of certain types or classes of returns to income or principal:

(a) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(b) Do not limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section.

History.
I.C., § 33-5004, as added by 2007, ch. 173, § 2, p. 512; am. 2012, ch. 146, § 1, p. 416.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 146, added "Subject to the provisions of subsection (3) of this section" at the beginning of subsection (2); and, in subsection (3), added "any general or specific" and "or any direction in such gift instrument relating to measuring permitted distributions to permitted payees by reference to certain types or classes of investment returns, or allocation in such gift instrument of certain types or classes of returns to income or principal" in the introductory paragraph and deleted "otherwise" preceding "limit" in paragraph (b).

CHAPTER 52
PUBLIC CHARTER SCHOOLS

SECTION.
33-5202A. Definitions.
33-5203. Authorization — Limitations.
33-5205. Petition to establish public charter school.
33-5205A. Transfer of charter.
33-5205B. Performance certificates.
33-5206. Requirements and prohibitions upon approval of a public charter school.
33-5207. Charter appeal procedure.
33-5208. Public charter school financial support. [Effective until June 1, 2014.]
33-5208. Public charter school financial support. [Effective June 1, 2014.]
33-5209. Enforcement — Revocation — Appeal. [Repealed.]
33-5209A. Accountability.
33-5209B. Charter renewals.
33-5209C. Enforcement — Revocation — Appeal.
33-5210. Application of school law — Accountability — Exemption from state rules.
33-5211. Technical support and information.
33-5212. School closure and dissolution.
33-5213. Public charter school commission.
33-5214. Public charter school authorizers fund.
33-5216. Public postsecondary institutions — Public charter high schools. [Null and void.]

33-5202A. Definitions. — As used in this chapter, unless the context requires otherwise:

(1) "Authorized chartering entity" means any of the following:

(a) A local board of trustees of a school district in this state;

(b) The public charter school commission created pursuant to the provisions of this chapter;

(c) An Idaho public college, university or community college;

(d) A private, nonprofit Idaho-based, nonsectarian college or university that is accredited by the same organization that accredits Idaho public colleges and universities.

(2) "Charter" means the grant of authority approved by the authorized chartering entity to the board of directors of the public charter school.

(3) "Founder" means a person, including employees or staff of a public charter school, who makes a material contribution toward the establishment of a public charter school in accordance with criteria determined by the board of directors of the public charter school, and who is designated as such at the time the board of directors acknowledges and accepts such contribution. The criteria for determining when a person is a founder shall not discriminate against any person on any basis prohibited by the federal

or state constitutions or any federal, state or local law. The designation of a person as a founder, and the admission preferences available to the children of a founder, shall not constitute pecuniary benefits.

(4) "Performance certificate" means a fixed-term, renewable certificate between a public charter school and an authorized chartering entity that outlines the roles, powers, responsibilities and performance expectations for each party to the certificate.

(5) "Petition" means the document submitted by a person or persons to the authorized chartering entity to request the creation of a public charter school.

(6) "Professional-technical regional public charter school" means a public charter secondary school authorized under this chapter to provide programs in professional-technical education which meet the standards and qualifications established by the division of professional-technical education. A professional-technical regional public charter school may be approved by an authorized chartering entity and, by the terms of its charter, shall operate in association with at least two (2) school districts. Notwithstanding the provisions of section 33-5205(3) (j), Idaho Code, participating school districts need not be contiguous.

(7) "Public charter school" means a school that is authorized under this chapter to deliver public education in Idaho.

(8) "Traditional public school" means any school existing or to be built that is operated and controlled by a school district in this state.

(9) "Virtual school" means a school that delivers a full-time, sequential program of synchronous and/or asynchronous instruction primarily through the use of technology via the internet in a distributed environment. Schools classified as virtual must have an online component to their school with online lessons and tools for student and data management.

History.

I.C., § 33-5202A, as added by 2004, ch. 371, § 2, p. 1099; am. 2005, ch. 376, § 1, p. 1201; am. 2007, ch. 246, § 1, p. 724; am. 2008, ch. 105, § 1, p. 288; am. 2012, ch. 188, § 11, p. 495; am. 2013, ch. 343, § 2, p. 908.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 188, in subsection (5), substituted "33-5205(3)(j)" for "33-5206(1)" near the end.

The 2013 amendment, by ch. 343, rewrote subsection (1), which previously read: "'Authorized chartering entity' means either the local board of trustees of a school district in this state, or the public charter school commission pursuant to the provisions of this chapter"; and added subsection (4) and renumbered the subsequent subsections accordingly.

Effective Dates.

Section 17 of S.L. 2013, ch. 343 provided that "Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013."

33-5203. Authorization — Limitations. — (1) The creation of public charter schools is hereby authorized. Public charter schools shall be part of the state's program of public education.

(2) New public charter schools which may begin educational instruction in any one (1) school year shall be subject to the following:

(a) No whole school district may be converted to a charter district or any configuration which includes all schools as public charter schools; and

(b) A petition must be received by the initial authorized chartering entity no later than September 1 to be eligible to begin instruction the first complete school year following receipt of the petition; and

(c) To begin operations, a newly chartered public school must be authorized by no later than January 1 of the previous school year.

(3) A public charter school may be formed either by creating a new public charter school, which charter may be approved by any authorized chartering entity, or by converting an existing traditional public school to a public charter school, which charter may only be approved by the board of trustees of the school district in which the existing public school is located.

(4) No charter shall be approved under this chapter:

(a) Which provides for the conversion of any existing private or parochial school to a public charter school.

(b) To a for-profit entity or any school which is operated by a for-profit entity, provided however, nothing herein shall prevent the board of directors of a public charter school from legally contracting with for-profit entities for the provision of products or services that aid in the operation of the school.

(c) By the board of trustees of a school district if the public charter school's physical location is outside the boundaries of the authorizing school district.

(5) A public virtual school charter may be approved by any authorized chartering entity except a local school district board of trustees. In addition, a charter may also be approved by the state board of education pursuant to section 33-5207(5)(b), Idaho Code.

(6) The state board of education shall adopt rules, subject to law, to establish a consistent application and review process for the approval and maintenance of all public charter schools.

(7) Each public charter school authorized by an authorized chartering entity other than a local school district board of trustees is hereby designated as a local education agency (LEA) as such term is defined in 34 CFR 300.28. Public charter schools chartered by the board of trustees of a school district may also be designated by the board of trustees as an LEA, with the concurrence of the public charter school board of directors. Otherwise, the public charter school shall be included in that district's LEA.

History.

I.C., § 33-5203, as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 1, p. 623; am. 2004, ch. 371, § 3, p. 1099; am. 2005, ch. 255, § 7, p. 782; am. 2005, ch. 376, § 2, p. 1201; am. 2006, ch. 16, § 4, p. 42; am. 2012, ch. 112, § 1, p. 310; am. 2013, ch. 343, § 3, p. 908.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 112, rewrote subsection (2) to remove the growth cap of six new, public charter schools per year and to remove the cap of one new, public charter school per district per year.

The 2013 amendment, by ch. 343, deleted "The limitation provided in this subsection (4)(c) does not apply to a home-based public virtual school." at the end of paragraph (4)(c); substituted "any authorized chartering entity except a local school district board of trustees"

for "the public charter school commission" in the first sentence of subsection (5); and rewrote subsection (7), which previously read: "The state board of education shall be responsible to designate those public charter schools that will be identified as a local education agency (LEA) as such term is defined in 34 CFR 300.28; however, only public charter schools chartered by the board of trustees of a school district may be included in that district's LEA."

Effective Dates.

Section 17 of S.L. 2013, ch. 343 provided that "Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013."

33-5204. Nonprofit corporation — Liability — Insurance.

JUDICIAL DECISIONS

Charter School As Political Subdivision.

Charter school itself was a political subdivision of the state having been created by the state under this section and, therefore, had no privileges or immunities to invoke against the state. Nampa Classical Acad. v. Goesling, 714 F. Supp. 2d 1029 (D. Idaho 2010).

33-5205. Petition to establish public charter school. — (1) Any group of persons may petition to establish a new public charter school, or to convert an existing traditional public school to a public charter school. The purpose of the charter petition is to present the proposed public charter school's academic and operational vision and plans, demonstrate the petitioner's capacities to execute the proposed vision and plans and provide the authorized chartering entity a clear basis for assessing the applicant's plans and capacities. An approved charter petition shall not serve as the school's performance certificate.

(a) A petition to establish a new public charter school, including a public virtual charter school, shall be signed by not fewer than thirty (30) qualified electors of the attendance area designated in the petition, unless it is a petition for approval by an authorized chartering entity permitted pursuant to subsection (1)(c) or (1)(d) of section 33-5202A, Idaho Code. Proof of elector qualifications shall be provided with the petition. A petition to establish a new public charter school may be submitted directly to an authorized chartering entity permitted pursuant to subsection (1)(c) or (1)(d) of section 33-5202A, Idaho Code; provided however, that no such individual authorized chartering entity shall approve more than one (1) new public charter school each year within the boundaries of a single school district. Except as provided in this paragraph, authorized chartering entities permitted pursuant to the provisions of subsection (1)(c) or (1)(d) of section 33-5202A, Idaho Code, shall be governed by the same laws and rules in approving new public charter schools as the public charter school commission.

(b) A petition to establish a new public virtual school shall not be submitted directly to a local school district board of trustees. Except as provided in paragraph (a) of this subsection, a petition to establish a new public charter school, other than a new public virtual school, shall first be submitted to the local board of trustees in which the public charter school will be located. A petition shall be considered to be received by an authorized chartering entity as of the next regularly scheduled meeting of the authorized chartering entity after submission of the petition.

(c) The board of trustees may either: (i) consider the petition and approve the charter; or (ii) consider the petition and deny the charter; or (iii) refer the petition to the public charter school commission, but such referral shall not be made until the local board has documented its due diligence in considering the petition. Such documentation shall be submitted with the petition to the public charter school commission. If the petitioners and the local board of trustees have not reached mutual agreement on the provisions of the charter, after a reasonable and good faith effort, within seventy-five (75) days from the date the charter petition is received, the petitioners may withdraw their petition from the local board of trustees and may submit their charter petition to the public charter school commission. Documentation of the reasonable and good faith effort between the petitioners and the local board of trustees must be submitted with the petition to the public charter school commission.

(d) A petition to convert an existing traditional public school shall be submitted to the board of trustees of the district in which the school is located for review and approval. The petition shall be signed by not fewer than sixty percent (60%) of the teachers currently employed by the school district at the school to be converted, and by one (1) or more parents or guardians of not fewer than sixty percent (60%) of the students currently attending the school to be converted. Each petition submitted to convert an existing school or to establish a new charter school shall contain a copy of the articles of incorporation and the bylaws of the nonprofit corporation, which shall be deemed incorporated into the petition.

(2) Not later than seventy-five (75) days after receiving a petition, the authorized chartering entity shall hold a public hearing for the purpose of discussing the provisions of the charter, at which time the authorized chartering entity shall consider the merits of the petition and the level of employee and parental support for the petition. In the case of a petition submitted to the public charter school commission, such public hearing must be not later than seventy-five (75) days after receipt of the petition, which may be extended for an additional specified period of time if both parties agree to an extension. Such agreement shall be established in writing and signed by representatives of both parties.

In the case of a petition for a public virtual charter school, if the primary attendance area described in the petition of a proposed public virtual charter school extends within the boundaries of five (5) or fewer local school districts, the prospective authorizer shall provide notice in writing of the public hearing no less than thirty (30) days prior to such public hearing to those local school districts. Such public hearing shall include any oral or written comments that an authorized representative of the local school districts may provide regarding the merits of the petition and any potential impacts on the school districts.

In the case of a petition for a non-virtual public charter school submitted to the public charter school commission, the board of the district in which the proposed public charter school will be physically located, shall be notified of the hearing in writing, by the public charter school commission, no less than thirty (30) days prior to the public hearing. Such public hearing

shall include any oral or written comments that an authorized representative of the school district in which the proposed public charter school would be physically located may provide regarding the merits of the petition and any potential impacts on the school district. The hearing shall include any oral or written comments that petitioners may provide regarding any potential impacts on such school district. If the school district chooses not to provide any oral or written comments as provided for in this subsection, such school district shall notify the public charter school commission of such decision. This public hearing shall be an opportunity for public participation and oral presentation by the public. This hearing is not a contested case hearing as described in chapter 52, title 67, Idaho Code. Following review of any petition and any public hearing provided for in this section, the authorized chartering entity shall within seventy-five (75) days either:

(a) Approve the charter;

(b) Deny the charter; or

(c) Provide a written response identifying the specific deficiencies in the petition.

If the authorized chartering entity exercises the option provided for in paragraph (c) of this subsection, then the petitioners may revise the petition and resubmit such within thirty (30) days. Within forty-five (45) days of receiving a revised petition, the authorized chartering entity shall review the revised petition and either approve or deny the petition based upon whether the petitioners have adequately addressed the specific deficiencies identified in the authorized chartering entity's written response, or based upon any other changes made to the petition, and upon no other criteria.

(3) An authorized chartering entity may approve a charter under the provisions of this chapter only if it determines that the petition contains the requisite signatures, the information required by subsections (4) and (5) of this section, and additional statements describing all of the following:

(a) The proposed educational program of the public charter school, designed among other things, to identify what it means to be an "educated person" in the twenty-first century, and how learning best occurs. The goals identified in the program shall include how all educational thoroughness standards as defined in section 33-1612, Idaho Code, shall be fulfilled.

(b) The measurable student educational standards identified for use by the public charter school. "Student educational standards" for the purpose of this chapter means the extent to which all students of the public charter school demonstrate they have attained the skills and knowledge specified as goals in the school's educational program.

(c) The method by which student progress in meeting those student educational standards is to be measured.

(d) A provision by which students of the public charter school will be tested with the same standardized tests as other Idaho public school students.

(e) A provision which ensures that the public charter school shall be state accredited as provided by rule of the state board of education.

(f) The governance structure of the public charter school including, but not limited to, the person or entity who shall be legally accountable for the

operation of the public charter school, and the process to be followed by the public charter school to ensure parental involvement.
(g) The qualifications to be met by individuals employed by the public charter school. Instructional staff shall be certified teachers as provided by rule of the state board of education.
(h) The procedures that the public charter school will follow to ensure the health and safety of students and staff.
(i) A plan for the requirements of section 33-205, Idaho Code, for the denial of school attendance to any student who is an habitual truant, as defined in section 33-206, Idaho Code, or who is incorrigible, or whose conduct, in the judgment of the board of directors of the public charter school, is such as to be continuously disruptive of school discipline, or of the instructional effectiveness of the school, or whose presence in a public charter school is detrimental to the health and safety of other pupils, or who has been expelled from another school district in this state or any other state.
(j) The primary attendance area of the charter school, which shall be composed of a compact and contiguous area. For the purposes of this section, if services are available to students throughout the state, the state of Idaho is considered a compact and contiguous area.
(k) Admission procedures, including provision for overenrollment. Such admission procedures shall provide that the initial admission procedures for a new public charter school, including provision for overenrollment, will be determined by lottery or other random method, except as otherwise provided herein. If initial capacity is insufficient to enroll all pupils who submit a timely application, then the admission procedures may provide that preference shall be given in the following order: first, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school; second, to siblings of pupils already selected by the lottery or other random method; third, to students residing within the primary attendance area of the public charter school; and fourth, by an equitable selection process such as a lottery or other random method. If so stated in its petition, a new public charter school may include the children of full-time employees of the public charter school within the first priority group subject to the limitations therein. Otherwise, such children shall be included in the highest priority group for which they would otherwise be eligible. If capacity is insufficient to enroll all pupils who submit a timely application for subsequent school terms, then the admission procedures may provide that preference shall be given in the following order: first, to pupils returning to the public charter school in the second or any subsequent year of its operation; second, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school; third, to siblings of pupils already enrolled in the public charter school; fourth, to students residing within the primary attendance area of the public charter school; and fifth, by an equitable selection process such as a lottery or other random method. There shall be no carryover from year to year of the list

maintained to fill vacancies. A new lottery shall be conducted each year to fill vacancies which become available. If so stated in its petition, a public charter school may include the following children within the second priority group subject to the limitations therein:

(i) The children of full-time employees of the public charter school;

(ii) Children who previously attended the public charter school within the previous three (3) school years, but who withdrew as a result of the relocation of a parent or guardian due to an academic sabbatical, employer or military transfer or reassignment.

Otherwise, such children shall be included in the highest priority group for which they would otherwise be eligible.

(*l*) The manner in which annual audits of the financial operations of the public charter school are to be conducted.

(m) The disciplinary procedures that the public charter school will utilize, including the procedure by which students may be suspended, expelled and reenrolled, and the procedures required by section 33-210, Idaho Code.

(n) A provision which ensures that all staff members of the public charter school will be covered by the public employee retirement system, federal social security, unemployment insurance, worker's compensation insurance, and health insurance.

(o) If the public charter school is a conversion of an existing traditional public school, the public school attendance alternative for students residing within the school district who choose not to attend the public charter school.

(p) A description of the transfer rights of any employee choosing to work in a public charter school that is approved by the board of trustees of a school district, and the rights of such employees to return to any noncharter school in the same school district after employment at such charter school.

(q) A provision which ensures that the staff of the public charter school shall be considered a separate unit for purposes of collective bargaining.

(r) The manner by which special education services will be provided to students with disabilities who are eligible pursuant to the federal individuals with disabilities education act, including disciplinary procedures for these students.

(s) A plan for working with parents who have students who are dually enrolled pursuant to section 33-203, Idaho Code.

(t) The process by which the citizens in the primary attendance area shall be made aware of the enrollment opportunities of the public charter school.

(u) A proposal for transportation services including estimated first year costs.

(v) A plan for termination of the charter by the board of directors, to include:

(i) Identification of who is responsible for dissolution of the charter school;

(ii) A description of how payment to creditors will be handled;

(iii) A procedure for transferring all records of students with notice to parents of how to request a transfer of student records to a specific school; and

(iv) A plan for the disposal of the public charter school's assets.

(4) An authorized chartering entity, except for a school district board of trustees, may approve a charter for a public virtual school under the provisions of this chapter only if it determines that the petition contains the requirements of subsections (3) and (5) of this section and the additional statements describing the following:

(a) The learning management system by which courses will be delivered;

(b) The role of the online teacher, including the consistent availability of the teacher to provide guidance around course material, methods of individualized learning in the online course and the means by which student work will be assessed;

(c) A plan for the provision of professional development specific to the public virtual school environment;

(d) The means by which public virtual school students will receive appropriate teacher-to-student interaction, including timely and frequent feedback about student progress;

(e) The means by which the public virtual school will verify student attendance and award course credit. Attendance at public virtual schools shall focus primarily on coursework and activities that are correlated to the Idaho state thoroughness standards;

(f) A plan for the provision of technical support relevant to the delivery of online courses;

(g) The means by which the public virtual school will provide opportunity for student-to-student interaction; and

(h) A plan for ensuring equal access to all students, including the provision of necessary hardware, software and internet connectivity required for participation in online coursework.

(5) The petitioner shall provide information regarding the proposed operation and potential effects of the public charter school including, but not limited to, the facilities to be utilized by the public charter school, the manner in which administrative services of the public charter school are to be provided and the potential civil liability effects upon the public charter school and upon the authorized chartering entity.

(6) An initial charter, if approved, shall be granted for a term of three (3) operating years. This term shall commence on the public charter school's first day of operation.

History.

I.C., § 33-5205, as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 3, p. 623; am. 2000, ch. 443, § 3, p. 1404; am. 2004, ch. 371, § 6, p. 1099; am. 2004, ch. 375, § 1, p. 1117; am. 2005, ch. 376, § 4, p. 1201; am. 2008, ch. 105, § 2, p. 289; am. 2008, ch. 157, § 1, p. 451; am. 2009, ch. 11, § 11, p. 14; am. 2009, ch. 41, § 1, p. 115; am. 2009, ch. 160, § 1, p. 477; am. 2009, ch. 200, § 1, p. 639; am. 2010, ch. 79, § 10, p. 133; am. 2012, ch. 188, § 1, p. 495; am. 2013, ch. 343, § 4, p. 908.

STATUTORY NOTES

Amendments.

This section was amended by four 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 11, corrected the erroneously duplicated subsection (5) designation.

The 2009 amendment, by ch. 41, in subsection (3)(j), in the introductory paragraph, added the fourth, fifth, and last sentences, added subsections (3)(j)(i) and (ii), and added the last sentence.

The 2009 amendment, by ch. 160, added the third, fifth, and sixth sentence in subsection (2).

The 2009 amendment, by ch. 200, in subsection (2), in the second paragraph, added the first sentence, and in the last sentence, inserted "local," deleted "in which the proposed public charter school would be physically located" preceding "may provide," and twice substituted "school districts" for "school district," and in the last paragraph, added the first four sentences, and in the fifth sentence, substituted "any petition" for "the petition" and "any public hearing" for "the public hearing," and inserted "provided for in this section."

The 2010 amendment, by ch. 79, in the first paragraph in subsection (2), deleted the former last sentence, which read: "In the case of a petition for a non-virtual public charter school submitted to the public charter school commission, the board of the district in which the proposed public charter school will be physically located, shall be notified of the hearing in writing, by the public charter school commission, no less than thirty (30) days prior to the public hearing."

The 2012 amendment, by ch. 188, rewrote the section to the extent that a detailed comparison is impracticable.

The 2013 amendment, by ch. 343, rewrote the section to the extent that a detailed comparison is impracticable.

Federal References.

The federal individuals with disabilities education act, referred to in paragraph (3)(r), is codified as 20 U.S.C.S. § 1400 et seq.

Effective Dates.

Section 17 of S.L. 2013, ch. 343 provided that "Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013."

33-5205A. Transfer of charter. — (1) A charter and performance certificate for a public charter school may be transferred to, and placed under the chartering authority of, any authorized chartering entity if the current authorizer, the receiving authorizer, and the board of directors of the public charter school all agree to such transfer, including any revision to the charter and performance certificate that may be required in connection with such transfer. Provided however, that a charter and performance certificate shall not be transferred to a school district board of trustees in which the public charter school is not physically located. A request to transfer a charter may be initiated by the board of directors of a public charter school or by the authorized chartering entity with chartering authority over the charter of such public charter school.

(2) A public charter school, authorized by any authorized chartering entity except a school district board of trustees, which has a primary attendance area located within more than one (1) school district, may transfer the physical location of its public charter school within its primary attendance area to locate the facilities within the boundaries of another school district within the primary attendance area if the authorized chartering entity, the board of trustees of each of the relevant school districts and the board of directors of the public charter school all approve of such transfer of facilities location, and if the authorized chartering entity approves any revisions to the charter that may be required in connection with such transfer.

(3) If all parties fail to reach agreement in regard to the request to

transfer a charter and performance certificate, as required herein, then the matter may be appealed directly to the state board of education. With respect to such appeal, the state board of education shall substantially follow the procedure as provided in section 33-5207(5)(b), Idaho Code. A transferred charter school shall not be considered a new public charter school.

History.
I.C., § 33-5205A, as added by 2005, ch. 376, § 5, p. 1201; am. 2008, ch. 171, § 1, p. 471; am. 2012, ch. 188, § 2, p. 495; am. 2013, ch. 343, § 5, p. 908.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 188, in subsection (2), substituted "authorized" for "approved" near the beginning of the subsection and deleted "approved" preceding the third occurrence of "primary attendance area."

The 2013 amendment, by ch. 343, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.
Section 17 of S.L. 2013, ch. 343 provided that "Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013."

33-5205B. Performance certificates. — (1) Within seventy-five (75) days of approval of a charter application, the authorized chartering entity and the governing board of the approved public charter school shall execute a performance certificate that clearly sets forth the academic and operational performance expectations and measures by which the public charter school will be judged and the administrative relationship between the authorized chartering entity and public charter school, including each party's rights and duties. The performance expectations and measures set forth in the performance certificate shall include, but need not be limited to, applicable federal and state accountability requirements. The performance provisions may be refined or amended by mutual agreement after the public charter school is operating and has collected baseline achievement data for its enrolled students.

(2) The performance certificate shall be signed by the president of the authorized chartering entity's governing board and the president of the public charter school's governing body. Within fourteen (14) days of executing a performance certificate, the authorized chartering entity shall submit to the state board of education written notification of the performance certificate execution, including a copy of the performance certificate.

(3) No public charter school may commence operations without a performance certificate executed in accordance with this provision and approved in an open meeting of the authorized chartering entity's governing board.

(4) All public charter schools approved prior to July 1, 2013, shall execute performance certificates with their authorizers no later than July 1, 2014. Such certificates shall ensure that each public charter school approved prior to July 1, 2014, is evaluated for renewal or nonrenewal between March 1, 2016, and March 1, 2019.

History.
I.C., § 33-5205B, as added by 2013, ch. 343, § 6, p. 908.

STATUTORY NOTES

Effective Dates.
Section 17 of S.L. 2013, ch. 343 provided that "Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013."

33-5206. Requirements and prohibitions upon approval of a public charter school. — (1) In addition to any other requirements imposed in this chapter, a public charter school shall be nonsectarian in its programs, affiliations, admission policies, employment practices, and all other operations, shall not charge tuition, levy taxes or issue bonds, and shall not discriminate against any student on any basis prohibited by the federal or state constitutions or any federal, state or local law. Admission to a public charter school shall not be determined according to the place of residence of the student, or of the student's parent or guardian within the district, except that a new or conversion public charter school established under the provisions of this chapter shall adopt and maintain a policy giving admission preference to students who reside within the primary attendance area of that public charter school.

(2) No board of trustees shall require any employee of the school district to be involuntarily assigned to work in a public charter school.

(3) Certified teachers in a public charter school shall be considered public school teachers. Educational experience shall accrue for service in a public charter school and such experience shall be counted by any school district for any teacher who has been employed in a public charter school.

(4) Employment of charter school teachers and administrators shall be on written contract in form as approved by the state superintendent of public instruction, conditioned upon a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder.

(5) No board of trustees shall require any student enrolled in the school district to attend a public charter school.

(6) Authorized chartering entities may establish reasonable pre-opening requirements or conditions to monitor the start-up progress of newly approved public charter schools and ensure that they are prepared to open smoothly on the date agreed, and to ensure that each school meets all building, health, safety, insurance and other legal requirements for school opening.

(7) Each public charter school shall annually submit the audit of the fiscal operations as required in section 33-5205(3)(l), Idaho Code, and a copy of the public charter school's accreditation report to the authorized chartering entity that approved its charter.

(8) A public charter school or the authorized chartering entity may enter into negotiations to revise a charter or performance certificate at any time. If a public charter school petitions to revise its charter or performance certificate, the authorized chartering entity's review of the revised petition shall be limited in scope solely to the proposed revisions. Except for public

charter schools authorized by a school district board of trustees, when a non-virtual public charter school submits a proposed charter revision to its authorized chartering entity and such revision includes a proposal to increase such public charter school's approved student enrollment cap by ten percent (10%) or more, the authorized chartering entity shall hold a public hearing on such petition. The authorized chartering entity shall provide the board of the local school district in which the public charter school is physically located notice in writing of such hearing no later than thirty (30) days prior to the hearing. The public hearing shall include any oral or written comments that an authorized representative of the school district in which the public charter school is physically located may provide regarding the impact of the proposed charter revision upon the school district. Such public hearing shall also include any oral or written comments that any petitioner may provide regarding the impact of the proposed charter revision upon such school district.

(9) When a charter is nonrenewed pursuant to the provisions of section 33-5209B, Idaho Code, revoked pursuant to section 33-5209C, Idaho Code, or the board of directors of the public charter school terminates the charter, the assets of the public charter school remaining after all debts of the public charter school have been satisfied must be returned to the authorized chartering entity for distribution in accordance with applicable law.

History.

I.C., § 33-5206, as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 4, p. 623; am. 2001, ch. 209, § 1, p. 831; am. 2004, ch. 220, § 1, p. 658; am. 2004, ch. 371, § 7, p. 1099; am. 2004, ch. 376, § 1, p. 1120; am. 2005, ch. 376, § 6, p. 1201; am. 2012, ch. 188, § 3, p. 495; am. 2013, ch. 343, § 7, p. 908.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 188, in subsection (1), inserted "primary" preceding "attendance area" near the end of the subsection and deleted the former last two sentences which read, "The attendance area of a charter school, as described in the petition, shall be composed of compact and contiguous area. For the purposes of this section, if services are available to students throughout the state, the state of Idaho is considered a compact and contiguous area"; in subsection (7), inserted "measurable" preceding "student educational standards"; added subsection (8); and renumbered former subsection (8) as subsection (9).

The 2013 amendment, by ch. 343, rewrote subsections (6), (7), and (8) and inserted "nonrenewed pursuant to the provisions of section 33-5209B, Idaho Code" in subsection (9).

Effective Dates.

Section 17 of S.L. 2013, ch. 343 provided that "Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013."

33-5207. Charter appeal procedure. — (1) If a local school board of trustees, acting in its capacity as an authorized chartering entity, approves a petition for the conversion of an existing traditional public school within the school district over the objection of thirty (30) or more persons or employees of the district, or if an authorized chartering entity denies a petition for the establishment of a new public charter school for any reason including, but not limited to, failure by the petitioner to follow procedures or for failure to provide required information, then such decisions may be

appealed to the state superintendent of public instruction within thirty (30) days of the date of the written decision, at the request of persons opposing the conversion of an existing traditional public school, or at the request of the petitioner whose request for a new charter was denied.

(2) The state superintendent of public instruction shall select a hearing officer to review the action of the authorized chartering entity, pursuant to section 67-5242, Idaho Code. The hearing officer shall, within thirty (30) days of receipt of the request, review the full record regarding the charter petition and convene a public hearing regarding the charter petition. Within ten (10) days of the public hearing, the hearing officer shall submit a written recommendation to the authorized chartering entity and to the persons requesting the review. The recommendation by the hearing officer either to affirm or reverse the decision of the authorized chartering entity shall be based upon the full record regarding the charter petition, including the standards and criteria contained in this chapter and upon any public charter school rules adopted by the state board of education. The recommendation shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the recommendations based on the applicable statutory provisions and factual information contained in the record.

(3) Within thirty (30) days following receipt of the hearing officer's written recommendation, the authorized chartering entity shall hold a meeting open to the public for the purpose of reviewing the hearing officer's written recommendation. Within ten (10) days of such meeting, the authorized chartering entity shall either affirm or reverse its initial decision. The authorized chartering entity's decision shall be in writing and contain findings which explain the reasons for its decision.

(4) If, upon reconsideration of a decision to approve the conversion of a traditional public school to a public charter school, the local school board:

(a) Affirms its initial decision to authorize such conversion, the charter shall be approved and there shall be no further appeal.

(b) Reverses its initial decision and denies the conversion, that decision is final and there shall be no further appeal.

(5) If, upon reconsideration of a decision to deny a petition for a public charter school, the authorized chartering entity:

(a) Reverses its initial decision and approves the public charter school petition, there shall be no further appeal.

(b) Affirms its initial decision denying the public charter school petition, the board of directors of the nonprofit corporation identified in the petition may appeal to the state board of education. The state board of education shall hold a public hearing within a reasonable time after receiving notice of such appeal but no later than sixty (60) calendar days after receiving such notice, and after the public hearing, shall take any of the following actions: (i) approve or deny the petition for the public charter school, provided that the state board of education shall only approve the petition if it determines that the authorized chartering entity failed to appropriately consider the charter petition, or if it acted in an arbitrary manner in

denying the petition; or (ii) in the case of a denial by the board of a local school district, redirect the matter to the public charter school commission for further review. Such public hearing shall be conducted pursuant to procedures as set by the state board of education.

(6) A public charter school for which a charter is approved by the state board of education shall qualify fully as a public charter school for all funding and other purposes of this chapter. The public charter school commission shall assume the role of the authorized chartering entity for any charter approved by the state board of education as provided in subsection (5) (b) of this section. Employees of a public charter school approved by the state board of education shall not be considered employees of the local school district in which the public charter school is located, nor of the state board of education, nor of the commission.

(7) The decision of the state board of education shall be subject to review pursuant to chapter 52, title 67, Idaho Code. Nothing in this section shall prevent a petitioner from bringing a new petition for a public charter school at a later time.

(8) There shall be no appeal of a decision by a local school board of trustees which denies the conversion of an existing traditional public school within that district to a public charter school, or by an authorized chartering entity which approves a petition for a public charter school.

History.

I.C., § 33-5207, as added by 1998, ch. 92, § 1, p. 330; am. 1998, ch. 201, § 2, p. 717; am. 2004, ch. 371, § 8, p. 1099; am. 2005, ch. 376, § 7, p. 1201; am. 2012, ch. 188, § 4, p. 495; am. 2013, ch. 343, § 8, p. 908.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 188, in subsection (2), inserted "full record regarding the" in the second sentence and inserted "full record regarding the charter petition, including the" in the fourth sentence.

The 2013 amendment, by ch. 343, substituted "or (ii) in the case of a denial by the board of a local school district, redirect the matter to the public charter school commission for further review" for "(ii) remand the matter back to the authorized chartering entity, which shall have authority to further review and act on such matter as directed by the state board of education; or (iii) redirect the matter to another authorized chartering entity for further review as directed by the state board of education" in paragraph (5)(b).

Effective Dates.

Section 17 of S.L. 2013, ch. 343 provided that "Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013."

33-5208. Public charter school financial support. [Effective until June 1, 2014.] — Except as provided in subsection (10) of this section, from the state educational support program the state department of education shall make the following apportionment to each public charter school for each fiscal year based on attendance figures submitted in a manner and time as required by the department of education:

(1) Per student support. Computation of support units for each public charter school shall be calculated as if it were a separate school according to the schedules in section 33-1002(4), Idaho Code, except that public charter schools with fewer than one hundred (100) secondary ADA shall use a

divisor of twelve (12) and the minimum units shall not apply, and no public charter school shall receive an increase in support units that exceeds the support units it received in the prior year by more than thirty (30). Funding from the state educational support program shall be equal to the total distribution factor, plus the salary-based apportionment provided in chapter 10, title 33, Idaho Code. Provided however, any public charter school that is formed by the conversion of an existing traditional public school shall be assigned divisors, pursuant to section 33-1002, Idaho Code, that are no lower than the divisors of the school district in which the traditional public school is located, for each category of pupils listed.

(2) Special education. For each student enrolled in the public charter school who is entitled to special education services, the state and federal funds from the exceptional child education program for that student that would have been apportioned for that student to the school district in which the public charter school is located.

(3) Alternative school support. Public charter schools may qualify under the provisions of sections 33-1002 and 33-1002C, Idaho Code, provided the public charter school meets the necessary statutory requirements, and students qualify for attendance at an alternative school as provided by rule of the state board of education.

(4) Transportation support. Support shall be paid to the public charter school as provided in chapter 15, title 33, Idaho Code, and section 33-1006, Idaho Code. Each public charter school shall furnish the department with an enrollment count as of the first Friday in November, of public charter school students who are eligible for reimbursement of transportation costs under the provisions of this subsection and who reside more than one and one-half (1 1/2) miles from the school. The state department of education is authorized to include in the annual appropriation to the charter school sixty percent (60%) of the estimated transportation cost. The final appropriation payment in July shall reflect reimbursements of actual costs pursuant to section 33-1006, Idaho Code. To be eligible for state reimbursement under the provisions of section 33-1006, Idaho Code, the student to be transported must reside within the public charter school's primary attendance area, and must meet at least one (1) of the following two (2) criteria:

(a) The student resides within the school district in which the public charter school is physically located; or

(b) The student resides within fifteen (15) miles of the public charter school, by road.

The limitations placed by this subsection on the reimbursement of transportation costs for certain students shall not apply to public virtual schools.

(5) Facilities funds. The state department of education shall distribute facilities funds to public charter schools for each enrolled student in which a majority of the student's instruction is received at a facility that is owned or leased by the public charter school. Such funds shall be used to defray the purchase, fee, loan or lease costs associated with payments for real property used by the students or employees of the public charter school for educational or administrative purposes. Such funds shall be distributed from the

moneys appropriated to the educational support program, and shall be calculated as a percentage of the statewide average amount of bond and plant facility funds levied per student by Idaho school districts, as follows:

Fiscal Year 2014	Twenty Percent (20%)
Fiscal Year 2015	Thirty Percent (30%)

For fiscal year 2016 and each fiscal year thereafter, this percentage shall increase by ten percent (10%) each time the total appropriation of state funds for the educational support program increases by three percent (3%) or more over the prior fiscal year, and shall decrease by ten percent (10%) each time the total appropriation of state funds for the educational support program decreases as compared to the prior fiscal year. Provided however, that the percentage shall be no less than twenty percent (20%) and no greater than fifty percent (50%), and that the average amount of funding received per public charter school shall not exceed the average amount of funding received by each school district pursuant to the provisions of section 33-906, Idaho Code.

For those public charter schools that do not receive facilities funds for all enrolled students, the school may submit to the state department of education a reimbursement claim for any costs for which facilities funds may be used. The state department of education shall reduce such claim by the greater of fifty percent (50%) or the percentage of the school's enrolled students for which the school receives facilities funds, and shall pay the balance. Provided however, that the total reimbursements paid to a public charter school, in combination with any facilities stipend received by the school, shall not exceed the amount of facilities funds that would have been received by the school had the school received facilities funds for all enrolled students. For the purposes of this subsection, the term "real property" shall be used as defined in section 63-201, Idaho Code.

(6) Payment schedule. The state department of education is authorized to make an advance payment of twenty-five percent (25%) of a public charter school's estimated annual apportionment for its first year of operation, and each year thereafter, provided the public charter school has an increase of student population in any given year of twenty (20) students or more, to assist the school with initial start-up costs or payroll obligations.

(a) For a public charter school to receive the advance payment, the school shall submit its anticipated fall membership for each grade level to the state department of education by June 1.

(b) Using the figures provided by the public charter school, the state department of education shall determine an estimated annual apportionment from which the amount of the advance payment shall be calculated. Advance payment shall be made to the school on or after July 1 but no later than July 31.

(c) All subsequent payments, taking into account the one-time advance payment made for the first year of operation, shall be made to the public charter school in the same manner as other traditional public schools in accordance with the provisions of section 33-1009, Idaho Code.

A public charter school shall comply with all applicable fiscal requirements of law, except that the following provisions shall not be applicable to public

charter schools: that portion of section 33-1004, Idaho Code, relating to reduction of the administrative and instructional staff allowance when there is a discrepancy between the number allowed and the number actually employed; and section 33-1004E, Idaho Code, for calculation of district staff indices.

(7) Nothing in this chapter shall be construed to prohibit any private person or organization from providing funding or other financial assistance to the establishment or operation of a public charter school.

(8) Each public charter school shall pay an authorizer fee to its authorized chartering entity, to defray the actual documented cost of monitoring, evaluation and oversight, which, in the case of public charter schools authorized by the public charter school commission, shall include each school's proportional fee share of all moneys appropriated to the public charter school commission, plus fifteen percent (15%). Provided however, that each public charter school's board of directors may direct up to ten percent (10%) of the calculated fee to pay membership fees to an organization or association that provides technical assistance, training and advocacy for Idaho public charter schools. Unless the authorized chartering entity declines payment, such fee shall be paid by February 15 of each fiscal year and shall not exceed the greater of:

(a) All state funds distributed to public schools on a support unit basis for the prior fiscal year, divided by the statewide number of public school students in average daily attendance in the first reporting period in the prior fiscal year; or

(b) The lesser of:

(i) The result of the calculation in subsection (8)(a) of this section, multiplied by four (4); or

(ii) One and one-half percent (1.5%) of the result of the calculation in subsection (8)(a) of this section, multiplied by the public charter school's average daily attendance in the first reporting period in the current fiscal year.

(9) Nothing in this chapter shall prevent a public charter school from applying for federal grant moneys.

(10)(a) Each student in attendance at a public virtual school shall be funded based upon either the actual hours of attendance in the public virtual school on a flexible schedule, or the percentage of coursework completed, whichever is more advantageous to the school, up to the maximum of one (1) full-time equivalent student.

(b) All federal educational funds shall be administered and distributed to public charter schools, including public virtual schools, that have been designated by the state board of education as a local education agency (LEA), as provided in section 33-5203(7), Idaho Code.

(11) Nothing in this section prohibits separate face-to-face learning activities or services.

(12) The provisions of section 33-1021, Idaho Code, shall apply to public charter schools provided for in this chapter.

History.

I.C., § 33-5208, as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 5, p. 623; am. 2001, ch. 114, § 1, p. 405; am. 2002, ch. 109, § 1, p. 307; am. 2004, ch. 370, § 3, p. 1094; am. 2004, ch. 374, § 1, p. 1116; am. 2005, ch. 255, § 6, p. 782; am. 2005, ch. 376, § 8, p. 1201; am. 2006 (1st E.S.), ch. 1, § 13; am. 2007, ch. 350, § 7, p. 1028; am. 2009, ch. 284, § 3, p. 852; am. 2011, ch. 310, § 2, p. 878; am. 2012, ch. 188, § 5, p. 495; am. 2013, ch. 342, § 2, p. 900.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 284, in the introductory paragraph in subsection (4), substituted "students who are eligible for reimbursement of transportation costs under the provisions of this subsection and who reside more than one and one-half (1 1/2) miles from the school" for "students living more than one and one-half (1 1/2) miles from the school" in the third sentence, substituted "sixty percent (60%)" for "eighty percent (80%)" in the fifth sentence, substituted "shall reflect reimbursements of actual costs pursuant to section 33-1006, Idaho Code" for "shall reflect eighty-five percent (85%) of the actual cost" in the sixth sentence, and added the last sentence; and added subsections (4)(a) and (4)(b).

The 2011 amendment, by ch. 310, added subsection (10).

The 2012 amendment, by ch. 188, in subsection (4), deleted the former third sentence which read, "For charter schools in the initial year of operation, the petition shall include a proposal for transportation services with an estimated first year cost" and substituted "primary attendance area" for "attendance zone" in the last sentence of the introductory paragraph; deleted "section 33-1003B, Idaho Code, relating to guaranteed minimum support" following "public charter schools" from the last sentence of subsection (5); and deleted former paragraph (8)(a), which contained information concerning dates that have already passed.

The 2013 amendment, by ch. 342, updated the reference in the introductory language; added present subsections (5) and 8; and redesignated former subsections (5) through (7) as present subsections (6) through (8) and former subsections (7) through (10) as present subsections (9) through (12).

Compiler's Notes.

For this section as effective June 1, 2014, see the following section, also numbered § 33-5208.

33-5208. Public charter school financial support. [Effective June 1, 2014.] — Except as provided in subsection (10) of this section, from the state educational support program the state department of education shall make the following apportionment to each public charter school for each fiscal year based on attendance figures submitted in a manner and time as required by the department of education:

(1) Per student support. Computation of support units for each public charter school shall be calculated as if it were a separate school according to the schedules in section 33-1002(4), Idaho Code, except that public charter schools with fewer than one hundred (100) secondary ADA shall use a divisor of twelve (12) and the minimum units shall not apply, and no public charter school shall receive an increase in support units that exceeds the support units it received in the prior year by more than thirty (30). Funding from the state educational support program shall be equal to the total distribution factor, plus the salary-based apportionment provided in chapter 10, title 33, Idaho Code. Provided however, any public charter school that is formed by the conversion of an existing traditional public school shall be assigned divisors, pursuant to section 33-1002, Idaho Code, that are no lower than the divisors of the school district in which the traditional public school is located, for each category of pupils listed.

(2) Special education. For each student enrolled in the public charter school who is entitled to special education services, the state and federal funds from the exceptional child education program for that student that

would have been apportioned for that student to the school district in which the public charter school is located.

(3) Alternative school support. Public charter schools may qualify under the provisions of sections 33-1002 and 33-1002C, Idaho Code, provided the public charter school meets the necessary statutory requirements, and students qualify for attendance at an alternative school as provided by rule of the state board of education.

(4) Transportation support. Support shall be paid to the public charter school as provided in chapter 15, title 33, Idaho Code, and section 33-1006, Idaho Code. Each public charter school shall furnish the department with an enrollment count as of the first Friday in November, of public charter school students who are eligible for reimbursement of transportation costs under the provisions of this subsection and who reside more than one and one-half (1 1/2) miles from the school. The state department of education is authorized to include in the annual appropriation to the charter school sixty percent (60%) of the estimated transportation cost. The final appropriation payment in July shall reflect reimbursements of actual costs pursuant to section 33-1006, Idaho Code. To be eligible for state reimbursement under the provisions of section 33-1006, Idaho Code, the student to be transported must reside within the public charter school's primary attendance area, and must meet at least one (1) of the following two (2) criteria:

(a) The student resides within the school district in which the public charter school is physically located; or

(b) The student resides within fifteen (15) miles of the public charter school, by road.

The limitations placed by this subsection on the reimbursement of transportation costs for certain students shall not apply to public virtual schools.

(5) Facilities funds. The state department of education shall distribute facilities funds to public charter schools for each enrolled student in which a majority of the student's instruction is received at a facility that is owned or leased by the public charter school. Such funds shall be used to defray the purchase, fee, loan or lease costs associated with payments for real property used by the students or employees of the public charter school for educational or administrative purposes. Such funds shall be distributed from the moneys appropriated to the educational support program, and shall be calculated as a percentage of the statewide average amount of bond and plant facility funds levied per student by Idaho school districts, as follows:

Fiscal Year 2014	Twenty Percent (20%)
Fiscal Year 2015	Thirty Percent (30%)

For fiscal year 2016 and each fiscal year thereafter, this percentage shall increase by ten percent (10%) each time the total appropriation of state funds for the educational support program increases by three percent (3%) or more over the prior fiscal year, and shall decrease by ten percent (10%) each time the total appropriation of state funds for the educational support program decreases as compared to the prior fiscal year. Provided however, that the percentage shall be no less than twenty percent (20%) and no

greater than fifty percent (50%), and that the average amount of funding received per public charter school shall not exceed the average amount of funding received by each school district pursuant to the provisions of section 33-906, Idaho Code.

For those public charter schools that do not receive facilities funds for all enrolled students, the school may submit to the state department of education a reimbursement claim for any costs for which facilities funds may be used. The state department of education shall reduce such claim by the greater of fifty percent (50%) or the percentage of the school's enrolled students for which the school receives facilities funds, and shall pay the balance. Provided however, that the total reimbursements paid to a public charter school, in combination with any facilities stipend received by the school, shall not exceed the amount of facilities funds that would have been received by the school had the school received facilities funds for all enrolled students. For the purposes of this subsection, the term "real property" shall be used as defined in section 63-201, Idaho Code.

(6) Payment schedule. The state department of education is authorized to make an advance payment of twenty-five percent (25%) of a public charter school's estimated annual apportionment for its first year of operation, and each year thereafter, provided the public charter school is serving more grades or at least ten percent (10%) more classes than the previous year, to assist the school with initial start-up costs or payroll obligations. For a public charter school entering its second or greater year of operations, the state department of education may require documentation establishing the need for such an advance payment, including comparative class schedules and proof of a commensurate increase in the number of employees.

(a) For a public charter school to receive the advance payment, the school shall submit its anticipated fall membership for each grade level to the state department of education by June 1.

(b) Using the figures provided by the public charter school, the state department of education shall determine an estimated annual apportionment from which the amount of the advance payment shall be calculated. Advance payment shall be made to the school on or after July 1 but no later than July 31.

(c) All subsequent payments, taking into account the one-time advance payment made for the first year of operation, shall be made to the public charter school in the same manner as other traditional public schools in accordance with the provisions of section 33-1009, Idaho Code.

A public charter school shall comply with all applicable fiscal requirements of law, except that the following provisions shall not be applicable to public charter schools: that portion of section 33-1004, Idaho Code, relating to reduction of the administrative and instructional staff allowance when there is a discrepancy between the number allowed and the number actually employed; and section 33-1004E, Idaho Code, for calculation of district staff indices.

(7) Nothing in this chapter shall be construed to prohibit any private person or organization from providing funding or other financial assistance to the establishment or operation of a public charter school.

(8) Each public charter school shall pay an authorizer fee to its authorized chartering entity, to defray the actual documented cost of monitoring, evaluation and oversight, which, in the case of public charter schools authorized by the public charter school commission, shall include each school's proportional fee share of all moneys appropriated to the public charter school commission, plus fifteen percent (15%). Provided however, that each public charter school's board of directors may direct up to ten percent (10%) of the calculated fee to pay membership fees to an organization or association that provides technical assistance, training and advocacy for Idaho public charter schools. Unless the authorized chartering entity declines payment, such fee shall be paid by February 15 of each fiscal year and shall not exceed the greater of:

(a) All state funds distributed to public schools on a support unit basis for the prior fiscal year, divided by the statewide number of public school students in average daily attendance in the first reporting period in the prior fiscal year; or

(b) The lesser of:

(i) The result of the calculation in subsection (8)(a) of this section, multiplied by four (4); or

(ii) One and one-half percent (1.5%) of the result of the calculation in subsection (8)(a) of this section, multiplied by the public charter school's average daily attendance in the first reporting period in the current fiscal year.

(9) Nothing in this chapter shall prevent a public charter school from applying for federal grant moneys.

(10)(a) Each student in attendance at a public virtual school shall be funded based upon either the actual hours of attendance in the public virtual school on a flexible schedule, or the percentage of coursework completed, whichever is more advantageous to the school, up to the maximum of one (1) full-time equivalent student.

(b) All federal educational funds shall be administered and distributed to public charter schools, including public virtual schools, that have been designated as a local education agency (LEA), as provided in section 33-5203(7), Idaho Code.

(11) Nothing in this section prohibits separate face-to-face learning activities or services.

(12) The provisions of section 33-1021, Idaho Code, shall apply to public charter schools provided for in this chapter.

History.

I.C., § 33-5208, as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 5, p. 623; am. 2001, ch. 114, § 1, p. 405; am. 2002, ch. 109, § 1, p. 307; am. 2004, ch. 370, § 3, p. 1094; am. 2004, ch. 374, § 1, p. 1116; am. 2005, ch. 255, § 6, p. 782; am. 2005, ch. 376, § 8, p. 1201; am. 2006 (1st E.S.), ch. 1, § 13; am. 2007, ch. 350, § 7, p. 1028; am. 2009, ch. 284, § 3, p. 852; am. 2011, ch. 310, § 2, p. 878; am. 2012, ch. 188, § 5, p. 495; am. 2013, ch. 342, § 2, p. 900; am. 2013, ch. 343, § 9, p. 908.

STATUTORY NOTES

Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 342, updated the reference in the introductory language; added present subsections (5) and 8; and redesignated former subsections (5) through (7) as present subsections (6) through (8) and former subsections (7) through (10) as present subsections (9) through (12).

The 2013 amendment, by ch. 343, in subsection (5), substituted "is serving more grades or at least ten percent (10%) more classes than the previous year" for "has an increase of student population in any given year of twenty (20) students or more" in the next-to-last sentence, and added the last sentence; and deleted "by the state board of education" following "designated" in paragraph (8)(b).

Compiler's Notes.

For this section as effective until June 1, 2014, see the preceding section, also numbered § 33-5208.

Effective Dates.

Section 17 of S.L. 2013, ch. 343 provided that "Section 9 of this act shall be in full force and effect on and after June 1, 2014."

33-5209. Enforcement — Revocation — Appeal. [Repealed.]

Repealed by S.L. 2013, ch. 343, § 10, effective July 1, 2013.

History.

I.C., § 33-5209, as added by 1998, ch. 92, § 1, p. 330; am. 2001, ch. 65, § 1, p. 122; am. 2004, ch. 371, § 9, p. 1099; am. 2005, ch. 376, § 9, p. 1201; am. 2008, ch. 251, § 1, p. 737; am. 2009, ch. 160, § 2, p. 477; am. 2012, ch. 188, § 6, p. 495.

33-5209A. Accountability. — (1) Performance framework. The performance provisions within the performance certificate shall be based upon a performance framework that clearly sets forth the academic and operational performance indicators, measures and metrics that will guide the authorized chartering entity's evaluations of each public charter school. The performance framework shall include indicators, measures and metrics for, at a minimum:

(a) Student academic proficiency;

(b) Student academic growth;

(c) College and career readiness (for high schools); and

(d) Board performance and stewardship, including compliance with all applicable laws, regulations and terms of the performance certificate.

(2) Measurable performance targets shall be set by each public charter school in conjunction with its authorized chartering entity and shall, at a minimum, require that each school meet applicable federal, state and authorized chartering entity goals for student achievement.

(3) The performance framework shall allow the inclusion of additional rigorous, valid and reliable indicators proposed by a public charter school to augment external evaluations of its performance, provided that the authorized chartering entity approves the quality and rigor of such school-proposed indicators, and that they are consistent with the purposes of this chapter.

(4) For each public charter school it oversees, the authorized chartering entity shall be responsible for analyzing and reporting all data from state assessments in accordance with the performance framework.

History.

I.C., § 33-5209A, as added by 2013, ch. 343, § 11, p. 908.

STATUTORY NOTES

Compiler's Notes.
The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.
Section 17 of S.L. 2013, ch. 343 provided that "Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013."

33-5209B. Charter renewals. — (1) A charter may be renewed for successive five (5) year terms of duration. An authorized chartering entity may grant renewal with specific, written conditions for necessary improvements to a public charter school. Any such specific, written conditions shall state the date by which the conditions must be met.

(2) Following the initial three (3) year term, an authorized chartering entity may nonrenew or grant renewal for an additional five (5) years, based upon the performance of the public charter school on the performance indicators, measures and metrics contained in the performance certificate. Subsequent renewals shall be for a term of five (5) years.

(3) No later than November 15, the authorized chartering entity shall issue a public charter school performance report and charter renewal application guidance to any public charter school whose charter will expire the following year. The performance report shall summarize the public charter school's performance record to date, based upon the data required by this chapter and the performance certificate, and shall provide notice of any weaknesses or concerns determined by the authorized chartering entity concerning the public charter school that may jeopardize its position in seeking renewal, if not timely rectified. The public charter school shall have thirty (30) days to respond to the performance report and submit any corrections or clarifications for the report.

(4) The renewal application guidance shall, at a minimum, provide an opportunity for the public charter school to:

(a) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal; and

(b) Describe improvements undertaken or planned for the school.

(5) The renewal application guidance shall include or refer explicitly to the criteria that will guide the authorized chartering entity's renewal decisions, which shall be based on independent fiscal audits and the performance framework set forth in the performance certificate.

(6) No later than December 15, the governing board of a public charter school seeking renewal shall submit a renewal application to the authorized chartering entity pursuant to the renewal application guidance issued by the authorized chartering entity. The authorized chartering entity shall vote on the renewal application no later than March 15.

(7) In making charter renewal decisions, every authorized chartering entity shall:

(a) Ground its decisions in evidence of the school's performance over the term of the performance certificate in accordance with the performance framework set forth in the performance certificate;

(b) Ensure that data used in making renewal decisions are available to the school and the public; and

(c) Provide a public report summarizing the evidence basis for each decision.

(8) An authorized chartering entity must develop revocation and nonrenewal processes that:

(a) Provide the charter holders with a timely notification of the prospect of revocation or nonrenewal and of the reasons for such possible closure, which shall be limited to failure to meet the terms of the performance certificate or the written conditions established pursuant to the provisions of subsection (1) of this section;

(b) Allow the charter holders a reasonable amount of time in which to prepare a response;

(c) Provide the charter holders with an opportunity to submit documents and give testimony challenging the rationale for closure and in support of the continuation of the school at an orderly proceeding held for that purpose;

(d) Allow the charter holders to be represented by counsel and to call witnesses on their behalf;

(e) Permit the recording of such proceedings; and

(f) After a reasonable period for deliberation, require a final determination to be made and conveyed in writing to the charter holders.

(9) An authorized chartering entity shall renew any charter in which the public charter school met all of the terms of its performance certificate at the time of renewal. An authorized chartering entity may renew or nonrenew any charter in which the public charter school failed to meet one (1) or more of the terms of its performance certificate.

History.

I.C., § 33-5209B, as added by 2013, ch. 343, § 12, p. 908.

STATUTORY NOTES

Effective Dates.

Section 17 of S.L. 2013, ch. 343 provided that "Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013."

33-5209C. Enforcement — Revocation — Appeal. — (1) An authorized chartering entity shall continually monitor the performance and legal compliance of the public charter schools it oversees, including collecting and analyzing data to support ongoing evaluation according to the performance certificate. Every authorized chartering entity shall have the authority to conduct or require oversight activities that enable the authorized chartering entity to fulfill its responsibilities pursuant to the provisions of this chapter, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this chapter, adhere to the terms of the performance certificate and do not unduly inhibit the autonomy granted to public charter schools.

(2) Each authorized chartering entity shall annually publish and make available to the public a performance report for each public charter school it oversees, in accordance with the performance framework set forth in the

performance certificate and section 33-5209A, Idaho Code. The authorized chartering entity may require each public charter school it oversees to submit an annual report to assist the authorized chartering entity in gathering complete information about each school consistent with the performance framework. Each public charter school shall publish its annual performance report on the school's website.

(3) If an authorized chartering entity has reason to believe that a public charter school cannot remain fiscally sound for the remainder of its certificate term, it shall provide the state department of education with written notification of such concern. Upon receiving such notification, the state department of education shall have the authority to modify the percentage of the total appropriation to be paid to the public charter school pursuant to the provisions of section 33-1009(1), Idaho Code, such that equal percentages are paid on each of the prescribed dates.

(4) If an authorized chartering entity has reason to believe that a public charter school has violated any provision of law, it shall notify the public charter school and the entity responsible for administering said law of the possible violation.

(5) If an authorized chartering entity revokes or does not renew a charter, the authorized chartering entity shall clearly state, in a resolution of its governing board, the reasons for the revocation or nonrenewal.

(6) Within fourteen (14) days of taking action to renew, not renew or revoke a charter, the authorized chartering entity shall report to the state board of education the action taken and shall provide a copy of the report to the public charter school at the same time that the report is submitted to the state board of education. The report shall include a copy of the authorized chartering entity's resolution setting forth the action taken and reasons for the decision and assurances as to compliance with all of the requirements set forth in this chapter.

(7) A charter may be revoked by the authorized chartering entity if the public charter school has failed to meet any of the specific, written conditions for necessary improvements established pursuant to the provisions of section 33-5209B(1), Idaho Code, by the dates specified. Revocation may not occur until the public charter school has been afforded a public hearing, unless the authorized chartering entity determines that the continued operation of the public charter school presents an imminent public safety issue, in which case the charter may be revoked immediately. Public hearings shall be conducted by the authorized chartering entity or such other person or persons appointed by the authorized chartering entity to conduct public hearings and receive evidence as a contested case in accordance with the provisions of section 67-5242, Idaho Code. Notice and opportunity to reply shall include, at a minimum, written notice setting out the basis for consideration of revocation, a period of not less than thirty (30) days within which the public charter school can reply in writing, and a public hearing within thirty (30) days of the receipt of the written reply.

(8) A decision to revoke or nonrenew a charter or to deny a revision of a charter may be appealed directly to the state board of education. With respect to such appeal, the state board of education shall substantially

follow the procedure as provided in section 33-5207(5)(b), Idaho Code. In the event the state board of education reverses a decision of revocation or nonrenewal, the public charter school subject to such action shall then be placed under the chartering authority of the public charter school commission.

History.
I.C., § 33-5209C, as added by 2013, ch. 343, § 13, p. 908.

STATUTORY NOTES

Effective Dates.
Section 17 of S.L. 2013, ch. 343 provided that "Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013."

33-5210. Application of school law — Accountability — Exemption from state rules. — (1) All public charter schools are under the general supervision of the state board of education.

(2) Every authorized chartering entity that approves a charter shall be responsible for ensuring that each public charter school program approved by that authorized chartering entity meets the terms of the charter, complies with the general education laws of the state unless specifically directed otherwise in this chapter 52, title 33, Idaho Code, and operates in accordance with the state educational standards of thoroughness as defined in section 33-1612, Idaho Code.

(3) Each charter school shall comply with the financial reporting requirements of section 33-701, subsections 5. through 10., Idaho Code, in the same manner as those requirements are imposed upon school districts.

(4) Each public charter school is otherwise exempt from rules governing school districts which have been promulgated by the state board of education, with the exception of state rules relating to:

(a) Waiver of teacher certification as necessitated by the provisions of section 33-5205(3)(g), Idaho Code;

(b) Accreditation of the school as necessitated by the provisions of section 33-5205(3)(e), Idaho Code;

(c) Qualifications of a student for attendance at an alternative school as necessitated by the provisions of section 33-5208(3), Idaho Code;

(d) The requirement that all employees of the school undergo a criminal history check as required by section 33-130, Idaho Code; and

(e) All rules which specifically pertain to public charter schools promulgated by the state board of education. Public charter schools authorized by the public charter school commission are also subject to rules promulgated by the public charter school commission.

History.
I.C., § 33-5210, as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 6, p. 623; am. 2000, ch. 278, § 1, p. 901; am. 2002, ch. 110, § 1, p. 309; am. 2004, ch. 371, § 10, p. 1099; am. 2005, ch. 376, § 10, p. 1201; am. 2012, ch. 188, § 7, p. 495.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 188, added the last sentence in paragraph (4)(e).

33-5211. Technical support and information. — (1) The state department of education shall provide technical assistance to persons or groups preparing or revising charter petitions and to existing public charter schools in the same manner as such assistance is provided to traditional public schools and school districts.

(2) Upon request, the state department of education shall provide the following information concerning a public charter school whose petition has been approved:

(a) The public charter school's charter and performance certificate;

(b) The annual audit performed at the public charter school pursuant to the public charter school petition; and

(c) Any written report by the state board of education to the legislature reviewing the educational effectiveness of public charter schools.

(3) At least one (1) person among a group of petitioners of a prospective public charter school shall attend a public charter school workshop offered by the state department of education. The state department of education shall provide notice of dates and locations when workshops will be held and shall provide proof of attendance to workshop attendees. Such proof shall be submitted by the petitioners to an authorized chartering entity along with the charter petition.

(4) Prior to submission of a petition for a new or conversion public charter school to an authorized chartering entity, the state department of education must conduct a sufficiency review of the petition and provide to the petitioners, in writing, the findings of such review.

History.
I.C., § 33-5211, as added by 1998, ch. 92, § 1, p. 330; am. 2001, ch. 188, § 1, p. 651; am. 2004, ch. 371, § 11, p. 1099; am. 2012, ch. 188, § 8, p. 495; am. 2013, ch. 343, § 14, p. 908.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 188, substituted "Technical support and" for "Assistance with petitions" in the section heading; added "and to existing public charter schools in the same manner as such assistance is provided to traditional public schools and school districts" at the end of subsection (1); and added subsections (3) and (4).

The 2013 amendment, by ch. 343, substituted "charter and performance certificate" for "petition" at the end of paragraph (2)(a).

Effective Dates.
Section 17 of S.L. 2013, ch. 343 provided: "Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013."

33-5212. School closure and dissolution. — (1) Prior to any public charter school closure decision, an authorized chartering entity shall have developed a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property and assets in

accordance with the requirements of this chapter. The protocol shall specify tasks, timelines and responsible parties, including delineating the respective duties of the school and the authorized chartering entity. In the event of a public charter school closure for any reason, the authorized chartering entity shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol. The closing school's board of directors shall be responsible for executing the school's closure.

(2) In the event of a public charter school closure for any reason, the assets of the school shall be distributed first to satisfy outstanding payroll obligations for employees of the school, including any tax, public employee retirement system and other employee benefit obligations, then to creditors of the school, and then to the authorized chartering entity in the case of a public charter school authorized by the board of a local school district. In the case of a public charter school authorized by any other authorized chartering entity, any remaining assets shall be distributed to the public school income fund. Assets purchased using federal funds shall be returned to the authorized chartering entity for redistribution among other public charter schools. If the assets of the school are insufficient to pay all parties to whom the school owes compensation, the prioritization of the distribution of assets may be determined by decree of a court of law.

History.
I.C., § 33-5212, as added by 2013, ch. 343, § 15, p. 908.

STATUTORY NOTES

Prior Laws.
Former § 33-5212, which comprised I.C., § 33-5212, as added by 1998, ch. 92, § 1, p. 330; am. 2001, ch. 188, § 2, p. 651, was repealed by S.L. 2009, ch. 11, § 12.

Effective Dates.
Section 17 of S.L. 2013, ch. 343 provided that "Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013."

33-5213. Public charter school commission. — (1) There is hereby created an independent public charter school commission, referred to hereinafter as the commission, to be located in the office of the state board of education, pursuant to section 33-105, Idaho Code. It shall be the responsibility and duty of the executive director of the state board of education acting at the direction of the commission to administer and enforce the provisions of this chapter, and the director or his designee shall serve as secretary to the commission.

(2) The public charter school commission shall adopt rules, subject to law, regarding the governance and administration of the commission.

(3) The commission shall be composed of seven (7) members:

(a) Three (3) members shall be appointed by the governor, subject to the advice and consent of the senate;

(b) Two (2) members shall be appointed by the speaker of the house of representatives; and

(c) Two (2) members shall be appointed by the president pro tempore of the senate.

Commissioner appointments made pursuant to this section prior to July 1, 2013, shall remain valid through the duration of the term to which each commissioner was appointed. To establish a transition to the appointing authority structure contained in this subsection, the first four (4) appointments available on or after July 1, 2013, shall be made in an alternating sequence for each appointment by the speaker of the house of representatives and the president pro tempore of the senate, followed by three (3) appointments by the governor. Subsequent appointments shall be made by the same appointing authority that originally appointed the commissioner whose term expired.

The term of office for commission members shall be four (4) years. In making such appointments, the appointing authorities shall consider regional balance. Members appointed to the commission shall collectively possess strong experience and expertise in public and nonprofit governance, management and finance, public school leadership, assessment, curriculum and instruction and public education law. All members of the commission shall have demonstrated understanding of and commitment to charter schools as a strategy for strengthening public education. No commissioner shall serve more than two (2) consecutive four (4) year terms. Members of the commission shall hold office until the expiration of the term to which the member was appointed and until a successor has been duly appointed, unless sooner removed for cause by the appointing authority. Whenever a vacancy occurs, the appointing authority shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(4) All members of the commission shall be citizens of the United States and residents of the state of Idaho for not less than two (2) years.

(5) The members of the commission shall, at their first regular meeting following the effective date of this act, and every two (2) years thereafter, elect, by a majority vote of the members of the commission, a chairman and a vice-chairman. The chairman shall preside at meetings of the commission, and the vice-chairman shall preside at such meetings in the absence of the chairman. A majority of the members of the commission shall constitute a quorum. The commission shall meet at such times and places as determined to be necessary and convenient, or at the call of the chair.

(6) Each member of the commission not otherwise compensated by public moneys shall be compensated as provided in section 59-509(h), Idaho Code.

History.

I.C., § 33-5213, as added by 2004, ch. 371, § 12, p. 1099; am. 2012, ch. 188, § 9, p. 495; am. 2013, ch. 343, § 16, p. 908.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 188, rewrote the first sentence in the last paragraph in subsection (3), deleting provisions relating to the staggered terms of the initial members of the commission.

The 2013 amendment, by ch. 343, rewrote subsection (3), which previously read: "The commission shall be composed of seven (7) members: (a) Three (3) members shall be current or former members of boards of directors of Idaho public charter schools and shall be appointed by the governor, subject to the advice and consent of the senate; provided

however, that no current board member of a public charter school authorized by the commission shall be eligible for appointment; (b) Three (3) members shall be current or former trustees of an Idaho school district and shall be appointed by the governor, subject to the advice and consent of the senate; and (c) One (1) member shall be a member of the public at large not directly associated with the Idaho public education system and shall be appointed by the governor, subject to the advice and consent of the senate. The term of office for commission members shall be four (4) years. In making such appointments, the governor shall consider regional balance. Members of the commission shall hold office until the expiration of the term to which the member was appointed and until a successor has been duly appointed, unless sooner removed for cause by the appointing authority. Whenever a vacancy occurs, the appointing authority shall appoint a qualified person to fill the vacancy for the unexpired portion of the term."

Effective Dates.

Section 17 of S.L. 2013, ch. 343 provided that "Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013."

33-5214. Public charter school authorizers fund. — There is hereby created in the state treasury a fund to be known as the "Public Charter School Authorizers Fund," hereinafter referred to as "the fund." All authorizer fees paid pursuant to section 33-5208(8), Idaho Code, for public charter schools under the governance of the public charter school commission shall be deposited in the fund. Moneys in the fund shall be appropriated to defray the commission's cost of operations and the state department of education's cost of reviewing, approving and overseeing any charter school authorizers requiring department approval.

History.

I.C., § 33-5214, as added by 2013, ch. 342, § 3, p. 900.

33-5216. Public postsecondary institutions — Public charter high schools. [Null and void.]

Null and void, pursuant to rejection of Proposition 3 on November 6, 2012.

History.

I.C., § 33-5216, as added by 2011, ch. 247, § 16, p. 669; am. 2011, ch. 300, § 8, p. 857.

STATUTORY NOTES

Compiler's Notes.

This section was enacted by S.L. 2011, ch. 247, effective April 8, 2011. Session Laws 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section, and the amendment by S.L. 2011, ch. 300, became null and void.

CHAPTER 53

IDAHO SCHOOL BOND GUARANTY ACT

SECTION.

33-5303. State's guaranty — Monitoring of financial solvency contract with bondholders — Guaranty — Limitation as to certain refunded bonds.
33-5304. Program eligibility — Option to forego [forgo] guaranty.
33-5305. State to monitor fiscal solvency of school districts — Duties of state treasurer and state superintendent of public instruction.
33-5306. Paying agent to provide notice — State treasurer to execute transfer to paying agents — Effect of transfer.
33-5307. State financial assistance intercept mechanism — Duties of state treasurer and attorney general — Interest and penalty provisions.
33-5308. Backup liquidity arrangements.
33-5308A. State notes issued to finance default avoidance program.
33-5309. Unlimited sales tax receipts pledge — State controller duties.
33-5310. Credit enhancement program.

33-5303. State's guaranty — Monitoring of financial solvency contract with bondholders — Guaranty — Limitation as to certain refunded bonds. —

(1)(a) The state of Idaho pledges to and agrees with the holders of any bonds that the state will not alter, impair, or limit the rights vested by the default avoidance program with respect to the bonds until the bonds, together with applicable interest, are fully paid and discharged.

(b) Notwithstanding subsection (1)(a) of this section, nothing contained in this chapter precludes an alteration, impairment, or limitation if adequate provision is made by law for the protection of the holders of the bonds.

(c) Each school district may refer to this pledge and undertaking by the state in its bonds.

(2)(a) The sales tax of the state is pledged to guarantee full and timely payment of the principal of, either at the stated maturity or by any advancement of maturity pursuant to a mandatory sinking fund payment, and interest on, refunding bonds issued on and after March 1, 1999, for voter approved bonds which were voted on by the electorate prior to March 1, 1999, and voter approved bonds which were voted on by the electorate on and after March 1, 1999, as such payments shall become due, except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration.

(b) This guaranty does not extend to the payment of any redemption premium.

(c) Reference to this chapter by its title on the face of any bond conclusively establishes the guaranty provided to that bond under provisions of this chapter.

(3)(a) Any bond guaranteed under this chapter that is refunded and considered paid for, no longer has the benefit of the guaranty provided by this chapter from and after the date on which that bond was considered to be paid.

(b) Any refunding bond issued by a school district that is itself secured by government obligations until the proceeds are applied to pay refunded bonds is not guaranteed under the provisions of this chapter, until the refunding bonds cease to be secured by government obligations.

(4) Only validly issued bonds issued after the effective date of this chapter are guaranteed under this chapter.

History.

I.C., § 33-5303, as added by 1999, ch. 328, § 1, p. 840; am. 2002, ch. 305, § 1, p. 869; am. 2007, ch. 89, § 2, p. 243; am. 2009, ch. 185, § 1, p. 601.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 185, in the section catchline, twice substituted "guaranty" for "guarantee"; in subsection (3)(b), substituted "school district" for "board"; and deleted subsection (5), which referenced maximum limits of state school bond guarantees.

Effective Dates.

Section 7 of S.L. 2009, ch. 185 declared an emergency. Approved April 17, 2009.

33-5304. Program eligibility — Option to forego [forgo] guaranty. —

(1)(a) Any school district through its board of trustees or its superintendent may apply to the state treasurer for the state's guaranty of its eligible bonds under this chapter. Where voter approval of a bond issuance is required by law, the school district must have such voter approval prior to its application for the state's guaranty.

(b) The state treasurer may charge the school district an application fee equal to the greater of the estimated costs to the state treasurer to process the application or five hundred dollars ($500), which shall be payable at the time the school district applies for a guaranty under this chapter. The state treasurer may charge a transaction fee of not more than five one-hundredths of one percent (.05%) of the total principal and interest payable on the school district's bonds. Such transaction fee shall be payable to the state treasurer at the time the school district issues the bonds guaranteed under this chapter and the application fee paid by the school district shall be credited against such transaction fee.

(c) There is hereby created in the state treasury the "Idaho School Bond Guaranty Administrative Fund" which shall be credited:

(i) Fees collected pursuant to this section;

(ii) Interest earned on the investment of idle moneys in the fund, which shall be paid to the fund; and

(iii) All other moneys as may be provided by law.

Moneys in the fund shall be continuously appropriated to the state treasurer, and any moneys remaining in the fund at the end of each fiscal year shall not be appropriated to any other fund. Moneys in the fund shall

be used to defray costs associated with the implementation, administration, and oversight of the Idaho school bond guaranty act.

(d) The state superintendent of public instruction shall provide an analysis of an applicant school district's fiscal solvency upon the request of the state treasurer.

(e) After reviewing the request, the analysis of the superintendent of public instruction, the reports submitted by the school district pursuant to section 33-5305, Idaho Code, and other information available to the state treasurer, the state treasurer shall determine in good faith whether or not the financial affairs and condition of a school district are such that it would be imprudent for the state to guarantee the bonds of that school district. The state treasurer shall also determine in good faith whether the guarantee of the bonds of the school district will adversely impact the credit rating of the state of Idaho or other financing programs benefiting the state of Idaho.

(f) Unless the state treasurer finds that the criteria set forth in subsection (1)(e) of this section prevents the issuance of a certificate of eligibility, the state treasurer shall promptly issue a certificate of eligibility and provide it to the requesting school district.

(g)(i) The school district receiving the certificate and all other persons may rely on the certificate as evidencing eligibility for the guaranty for one (1) year from and after the date of the certificate, without making further inquiry of the state treasurer during the year. The certificate of eligibility shall state that the guaranty is good for the life of the bond. This guaranty shall be printed on all bonds guaranteed pursuant to this chapter or shall be an addendum attached to all bonds guaranteed pursuant to this chapter.

(ii) The certificate of eligibility is valid for the life of the bond, even if the state treasurer later determines that the school district is ineligible for future guaranties.

(2) Any school district that chooses to forego [forgo] the benefits of the guaranty provided by this chapter for a particular issue of bonds may do so by not referring to this chapter on the face of its bonds.

(3) Any school district that has bonds, the principal of or interest on which has been paid, in whole or in part, by the state under this chapter may not issue any additional bonds guaranteed by this act until:

(a) All payment obligations of the school district to the state under the default avoidance program are satisfied; and

(b) The state treasurer certifies in writing, to be kept on file by the state treasurer, that the school district is fiscally solvent.

(4) Bonds not guaranteed by this chapter are not included in the definition of "bond" in section 33-5302, Idaho Code, as used generally in this chapter, are not subject to the requirements of and do not receive the benefits of this chapter.

History.

I.C., § 33-5304, as added by 1999, ch. 328, § 1, p. 840; am. 2009, ch. 185, § 2, p. 601.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 185, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 7 of S.L. 2009, ch. 185 declared an emergency. Approved April 17, 2009.

33-5305. State to monitor fiscal solvency of school districts — Duties of state treasurer and state superintendent of public instruction. — (1) The state treasurer shall:

(a) Receive the following from each school district applying for the state's guaranty under this chapter and each school district receiving the state's guaranty under this chapter:

(i) A copy of the annual statement of financial condition and report required in section 33-701, Idaho Code; and

(ii) A copy of the complete audit of the financial statements of the school district prepared pursuant to section 33-701, Idaho Code.

(b) In conjunction with the state superintendent of public instruction, annually report his conclusions concerning the fiscal solvency of school districts receiving a guaranty under this chapter to the governor, the legislature and the endowment fund investment board; and

(c) Report immediately to the governor, the endowment fund investment board and the state superintendent of public instruction any circumstances suggesting that a school district will be unable to timely meet its debt service obligations and recommend a course of remedial action.

(2) The state superintendent of public instruction shall:

(a) Provide an analysis of a school district's current fiscal solvency upon the request of the state treasurer;

(b) In conjunction with the state treasurer, annually report his conclusions concerning the fiscal solvency of school districts receiving a guaranty under this chapter to the governor, the legislature and the endowment fund investment board; and

(c) Report immediately to the governor, the endowment fund investment board and the state treasurer any circumstances suggesting that a school district will be unable to timely meet its debt service obligations and recommend a course of remedial action.

(3)(a) After examining the analysis of the state superintendent of public instruction and other information available to the state treasurer, the state treasurer shall determine whether or not the financial affairs and condition of a school district are such that it would be imprudent for the state to guarantee future bonds of that school district.

(b) If the state treasurer determines that the state should not guarantee the bonds of that school district, the state treasurer shall:

(i) Prepare a determination of ineligibility for future guaranties; and

(ii) Keep it on file in the office of the state treasurer.

(c) The state treasurer may remove a school district from the status of ineligibility for future guaranties when a subsequent report of the school district or other information made available to the state treasurer evidences that it is no longer imprudent for the state to guarantee the bonds of that school district.

(4) Nothing in this section affects the state's guaranty of bonds of a school district issued:

(a) Before determination of ineligibility for future guaranties;

(b) After the eligibility for future guaranties of the school district is restored; or

(c) Under a certificate of eligibility issued under this chapter.

History.

I.C., § 33-5305, as added by 1999, ch. 328, § 1, p. 840; am. 2009, ch. 185, § 3, p. 601; am. 2010, ch. 295, § 1, p. 795.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 185, rewrote the section to the extent that a detailed comparison is impracticable.

The 2010 amendment, by ch. 295, in paragraph (1)(b), added "In conjunction with the state superintendent of public instruction" at the beginning and deleted "and the state superintendent of public instruction" from the end; and added the paragraph (2)(a) designation and paragraphs (2)(b) and (2)(c).

Effective Dates.

Section 7 of S.L. 2009, ch. 185 declared an emergency. Approved April 17, 2009.

Section 6 of S.L. 2010, ch. 295 declared an emergency. Approved April 11, 2010.

33-5306. Paying agent to provide notice — State treasurer to execute transfer to paying agents — Effect of transfer. —

(1)(a) The superintendent of each school district with outstanding, unpaid bonds shall transfer moneys sufficient for the scheduled debt service payment to its paying agent at least fifteen (15) days before any principal or interest payment date for the bonds.

(b) The paying agent may, if instructed to do so by the superintendent, invest the moneys at the risk and for the benefit of the school district until the payment date.

(c) A superintendent who is unable to transfer the scheduled debt service payment to the paying agent fifteen (15) days before the payment date shall immediately notify the paying agent and the state treasurer as set forth in the procedures for notice under the provisions of this chapter established by the state treasurer.

(2) If sufficient funds are not transferred to the paying agent as required by subsection (1) of this section, the paying agent shall notify the state treasurer of that failure in writing at least ten (10) days before the scheduled debt service payment date as set forth in the procedures for notice under the provisions of this chapter established by the state treasurer.

(3)(a) If sufficient moneys to pay the scheduled debt service payment have not been transferred to the paying agent, the state treasurer shall, on or before the scheduled payment date, gather sufficient moneys to make the scheduled debt service payment as set forth in section 33-5308, Idaho Code, and transfer such moneys to the paying agent.

(b) The payment by the treasurer:

(i) Discharges the obligation of the issuing school district to its bondholders for the payment; and

(ii) Transfers the rights represented by the general obligation of the school district from the bondholders to the state.

(c) The school district shall pay the transferred obligation to the state as provided in this chapter.

History.
I.C., § 33-5306, as added by 1999, ch. 328, § 1, p. 840; am. 2010, ch. 295, § 2, p. 795.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 295, rewrote the section, authorizing the treasurer to establish procedures for providing notice where a debt service payment may be delinquent and providing the process for the treasurer to make such payments.

Effective Dates.
Section 6 of S.L. 2010, ch. 295 declared an emergency. Approved April 11, 2010.

33-5307. State financial assistance intercept mechanism — Duties of state treasurer and attorney general — Interest and penalty provisions. —

(1)(a) If one (1) or more payments on bonds are made by the state treasurer as provided in this chapter, the state treasurer shall:

(i) Immediately intercept any payments from any source of operating moneys provided by the state to the school district that issued the bonds that would otherwise be paid to the school district by the state; and

(ii) Apply the intercepted payments to reimburse the state for payments made pursuant to the state's guaranty until all obligations of the school district to the state arising from those payments, including interest and penalties, are paid in full.

(b) The state has no obligation to the school district or to any person or entity to replace any moneys intercepted under the authority of this subsection.

(2) The school district that issued bonds for which the state has made all or part of a debt service payment shall:

(a) Reimburse all moneys drawn by the state treasurer on its behalf;

(b) Pay interest to the state on all moneys paid by the state from the date the moneys drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus one percent (1%); and

(c) Pay all penalties required by this chapter.

(3)(a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the school district on the state, market interest and penalty rates, and the cost of funds, if any, that were required to be borrowed by the state to make payments on the bonds.

(b) The state treasurer may, after considering the circumstances giving rise to the failure of the school district to make payment on its bonds in a timely manner, impose on the school district a penalty of not more than five percent (5%) of the amount paid by the state pursuant to its guaranty for each instance in which a payment by the state is made.

(4)(a)(i) If the state treasurer determines that amounts obtained under

this section will not reimburse the state in full within one (1) year from the state's payment of a school district's scheduled debt service payment, the state treasurer shall pursue any legal action, including mandamus, against the school district and its board to compel it to:

1. Levy and provide tax revenues to pay debt service on its bonds when due; and

2. Meet its repayment obligations to the state.

(ii) In pursuing its rights under paragraph (a) of this subsection, the state shall have the same substantive and procedural rights as would a holder of the bonds of a school district.

(b) The attorney general shall assist the state treasurer in these duties.

(c) The school district shall pay the attorney's fees, expenses, and costs of the state treasurer and the attorney general.

(5)(a) Except as provided in paragraph (c) of this subsection, any school district whose operating funds were intercepted under this section may replace those funds from other school district moneys or from property taxes, subject to the limitations provided in this subsection.

(b) A school district may use property taxes or other moneys to replace intercepted funds only if the property taxes or other moneys were derived from:

(i) Taxes originally levied to make the payment but which were not timely received by the school district;

(ii) Taxes from a supplemental levy made to make the missed payment or to replace the intercepted moneys;

(iii) Moneys transferred from the undistributed reserve, if any, of the school district; or

(iv) Any other source of money on hand and legally available.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection, a school district may not replace operating funds intercepted by the state with moneys collected and held to make payments on bonds if that replacement would divert moneys from the payment of future debt service on the bonds and increase the risk that the state's guaranty would be called upon an additional time.

History.

I.C., § 33-5307, as added by 1999, ch. 328, § 1, p. 840; am. 2009, ch. 185, § 4, p. 601.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 185, in the section catchline, substituted "duties of state treasurer and attorney general" for "state treasurer duties"; throughout the section, substituted "school district" for "board" and inserted "school" preceding "district"; in subsection (1)(a)(i), deleted "from the public school permanent endowment fund or" following "payments"; and, in subsection (5)(c), substituted "an additional time" for "a second time."

Effective Dates.

Section 7 of S.L. 2009, ch. 185 declared an emergency. Approved April 17, 2009.

33-5308. Backup liquidity arrangements. — (1) If, at the time the state is required to make a debt service payment under its guaranty on

behalf of a school district, sufficient moneys of the state are not on hand and available for that purpose, the state treasurer shall gather sufficient funds to make the debt service payment by using one (1) or more of the following:

(a) Intercepting all or a portion of any payments from any source of operating moneys provided by the state to the school district that issued the bonds that would otherwise be paid to the school district by the state;

(b) Requesting the state controller transfer to the public school guarantee fund established by section 33-5309, Idaho Code, moneys from the state general fund established by section 67-1205, Idaho Code, representing sales tax receipts of the state in an amount not to exceed the scheduled debt service payment and using such funds to make all or a portion of the required payment;

(c) Issuing state notes, subject to the terms of section 33-5308A, Idaho Code; or

(d) Negotiating a voluntary loan from funds administered by the endowment fund investment board to make all or a portion of the required payment, provided that nothing in this subsection (1)(d) requires the endowment fund investment board to lend moneys to the state treasurer.

(2) The state has no obligation to the school district or to any person or entity to replace any moneys intercepted under the authority of this section. Any school district whose operating funds were intercepted pursuant to this section may replace those funds from other school district moneys or from property taxes, subject to the limitations provided in section 33-5307, Idaho Code.

(3) If the sources of funds set forth in subsection (1) of this section are insufficient to make a debt service payment and the school district bond is guaranteed by the credit enhancement program established pursuant to section 57-728, Idaho Code, the state treasurer shall make a request for the purchase of notes in the amount of the deficiency by the endowment fund investment board on behalf of the public school endowment as set forth in section 57-728, Idaho Code.

History.

I.C., § 33-5308, as added by 1999, ch. 328, § 1, p. 840; am. 2010, ch. 295, § 3, p. 795.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 295, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 6 of S.L. 2010, ch. 295 declared an emergency. Approved April 11, 2010.

33-5308A. State notes issued to finance default avoidance program. — State notes issued by the state treasurer pursuant to section 33-5308, Idaho Code, shall comply with the following:

(1) Each series of notes issued shall mature not later than twelve (12) months from the date the notes are issued, or the end of the fiscal year, whichever is sooner.

(2) Notes issued may be refunded using the procedures set forth in this

chapter for the issuance of notes, in an amount not more than the amount necessary to pay principal of an accrued but unpaid interest on any refunded notes plus all costs of issuance, sale and delivery of the refunding notes, rounded up to the nearest integral multiple of five thousand dollars ($5,000).

(3) Each series of refunding notes shall mature not later than twelve (12) months from the date the refunding notes are issued, or the end of the fiscal year, whichever is sooner.

(4) Before issuing or selling any note to other than a state fund or account, the state treasurer shall prepare a written plan of financing and file it with the governor. The plan of financing shall comply with the following:

(a) The plan of financing shall provide for:

(i) The terms and conditions under which the notes will be issued, sold and delivered;

(ii) The taxes or revenues to be anticipated;

(iii) The maximum amount of notes that may be outstanding at any one (1) time under the plan of financing;

(iv) The sources of payment of the notes;

(v) The rate or rates of interest, if any, on the notes or a method, formula or index under which the interest rate or rates on the notes may be determined during the time the notes are outstanding; and

(vi) All other details relating to the issuance, sale and delivery of the notes.

(b) In identifying the taxes or revenues to be anticipated and the sources of payment of the notes in the financing plan, the state treasurer may include any combination of the following:

(i) The taxes authorized by this chapter;

(ii) The intercepted revenues authorized by this chapter;

(iii) The proceeds of refunding notes; or

(iv) The terms and conditions of arrangements entered into by the state treasurer on behalf of the state with financial and other institutions for letters of credit, standby letters of credit, reimbursement agreements, and remarketing, indexing and tender agreements to secure the notes, including payment from any legally available source of fees, charges or other amounts coming due under the agreements entered into by the state treasurer.

(5) When issuing the notes to other than a state fund or account, the state treasurer shall issue an order setting forth the interest, form, manner of execution, payment, manner of sale, prices at or below face value, and all details of issuance of the notes. The order and the details set forth in the order shall conform with any applicable plan of financing and with this chapter.

(6) Each note shall recite:

(a) That it is a valid obligation of the state and that the full faith, credit, and resources of the state are pledged for the payment of the principal of and interest on the note from the taxes or revenues identified in accordance with its terms and the constitution and laws of Idaho.

(b) That these general obligation notes do not constitute debt of the state for the purposes of the debt limitation of section 1, article VIII, of the constitution of the state of Idaho.

(7) Immediately upon the completion of any sale of notes, the state treasurer shall:

(a) Make a verified return of the sale to the state controller, specifying the amount of notes sold, the persons to whom the notes were sold, and the price, terms and conditions of the sale; and

(b) Credit the proceeds of the sale, other than accrued interest and amounts required to pay costs of issuance of the notes, to the general fund to be applied to the purpose for which the notes were issued.

History.
I.C., § 33-5308A, as added by 2010, ch. 295, § 4, p. 795.

STATUTORY NOTES

Effective Dates.
Section 6 of S.L. 2010, ch. 295 declared an emergency. Approved April 11, 2010.

33-5309. Unlimited sales tax receipts pledge — State controller duties. —

(1)(a) There is hereby created in the state treasury the public school guarantee fund. Moneys in the fund shall be used only for payment of debt service payments under the provisions of this chapter, repayment of borrowing undertaken under the provisions of this chapter, to repay state funds used to make debt service payments under the provisions of this chapter, or as provided in section 33-5308, Idaho Code. Earnings of the public school guarantee fund shall be deposited into the general fund established by section 67-1205, Idaho Code. If moneys expected to be intercepted under this chapter are projected to be insufficient to make a debt service payment pursuant to section 33-5308, Idaho Code, to reimburse the state for its payments of school districts' scheduled debt service payments or it is necessary for the state treasurer to borrow as provided in this chapter and amounts to be intercepted under this chapter are expected to be insufficient to timely pay the general obligation notes issued or other borrowing undertaken under section 33-5308, Idaho Code, the state treasurer shall certify to and give notice to the state controller of the amount of the deficiency.

(b) After receipt of that certified notice from the state treasurer, the state controller shall cause moneys representing state sales tax receipts to be transferred from the general fund established by section 67-1205, Idaho Code, and deposited in the public school guarantee fund in the amount of the deficiency certified by the state treasurer.

(2) To the extent that other legally available revenues and funds of the state are insufficient to meet the certified deficiency, the state tax commission shall transfer moneys from the sales tax account as set forth in section 63-3638, Idaho Code.

History.
I.C., § 33-5309, as added by 1999, ch. 328, § 1, p. 840; am. 2010, ch. 295, § 5, p. 795.

STATUTORY NOTES

Cross References.
State controller, § 67-1001 et seq.

Amendments.
The 2010 amendment, by ch. 295, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.
Section 6 of S.L. 2010, ch. 295 declared an emergency. Approved April 11, 2010.

33-5310. Credit enhancement program. — If approved to participate in the Idaho school bond guaranty program established in this chapter, a school district may also seek credit enhancement, as authorized pursuant to section 57-728, Idaho Code, by applying therefor pursuant to section 57-728(3), Idaho Code.

History.
I.C., § 33-5310, as added by 1999, ch. 328, § 1, p. 840; am. 2009, ch. 185, § 5, p. 601.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 185, rewrote the section, providing that certain school districts may seek specified credit enhancement.

Effective Dates.
Section 7 of S.L. 2009, ch. 185 declared an emergency. Approved April 17, 2009.

CHAPTER 54

COLLEGE SAVINGS PROGRAM

SECTION.
33-5401. Definitions.
33-5402. State college savings program board — College savings program — Powers and duties.
33-5403. Administration of the program.
33-5404. Program requirements.
33-5409. College savings fund.

33-5401. Definitions. — As used in this chapter, the following terms have the following meanings unless the context clearly denotes otherwise:

(1) "Account" means an individual trust account or savings account established as prescribed in this chapter.

(2) "Account owner" means the person or state or local government organization designated in the agreement governing the account as having the right to withdraw moneys from the account before the account is disbursed to or for the benefit of the designated beneficiary.

(3) "Board" means the state college savings program board created in section 33-5402, Idaho Code.

(4) "Designated beneficiary," except as provided in section 33-5404, Idaho Code, means, with respect to an account, the individual designated at the time the account is opened as the individual whose higher education expenses are expected to be paid from the account or, if this designated beneficiary is replaced in accordance with section 33-5404, Idaho Code, the replacement beneficiary.

(5) "Eligible educational institution" shall have the meaning provided in 26 U.S.C. section 529.

(6) "Financial institution" means any state bank, national bank, savings bank, savings and loan association, credit union, insurance company, brokerage firm, trust company, mutual fund, investment firm or other similar entity that is authorized to do business in this state.

(7) "Member of the family" shall have the meaning as provided in 26 U.S.C. section 529.

(8) "Nonqualified withdrawal" means an account withdrawal that is not one (1) of the following:

(a) A qualified withdrawal;

(b) A withdrawal made as the result of the death or disability of the designated beneficiary of an account;

(c) A withdrawal that is made on account of a scholarship as defined in 26 U.S.C. section 117 or an educational allowance as defined in 26 U.S.C. section 25A(g)(2);

(d) A rollover or change of the designated beneficiary.

(9) "Person" means an individual, a trust, an estate, a partnership, an association, a foundation, a guardianship, a corporation, or a custodian under the Idaho uniform transfers to minors act.

(10) "Program" means the college savings program established under this chapter.

(11) "Qualified higher education expenses" shall have the meaning provided in 26 U.S.C. section 529(e)(3).

(12) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account, but only if the withdrawal is made in accordance with this chapter.

History.
I.C., § 33-5401, as added by 2000, ch. 213, § 1, p. 573; am. 2002, ch. 50, § 1, p. 113; am. 2003, ch. 5, § 1, p. 9; am. 2008, ch. 275, § 1, p. 783; am. 2013, ch. 110, § 1, p. 261.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 110, inserted "trust company, mutual fund, investment firm" near the end of subsection (6).

33-5402. State college savings program board — College savings program — Powers and duties. — There is hereby created the state college savings program board. The board shall consist of the state treasurer or his designee who shall serve as chair, the governor or designee, the state controller or designee, the attorney general or designee, the superintendent of public instruction or designee, and the secretary of state or designee. A quorum shall be necessary to transact business. Members of the board shall be compensated by their appointing entity. The state college savings program board shall:

(1) Develop and implement the program in a manner consistent with this chapter through the adoption of rules, guidelines and procedures;

(2) Retain professional services, if necessary, including accountants, auditors, consultants and other experts;

(3) Seek rulings and other guidance from the United States department

of the treasury, the internal revenue service and the state tax commission relating to the program;

(4) Make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code of 1986, as amended;

(5) Interpret, in rules, policies, guidelines and procedures, the provisions of this chapter broadly in light of its purpose and objectives;

(6) Charge, impose and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the program;

(7) Select the depositories and act as or select managers of the program in accordance with this chapter;

(8) Enter into contracts, within the limit of funds available therefor, acquire services and personal property, and do and perform any acts that may be necessary in the administration of the program. As a board comprised of elected officials, the board shall be exempt from the provisions of the procurement statutes and shall not be an agency as defined in section 67-5716, Idaho Code;

(9) Establish, in its discretion, a trust or other method of segregating the funds of participants in the program from the general funds of the state, the funds of the board and the funds of the members of the board;

(10) Administer the program and any trust established by the board as instrumentalities of the state under section 529 of the Internal Revenue Code of 1986, as amended, and the federal securities law, including the securities act of 1933, as amended, the trust indenture act of 1939, as amended, and the investment company act of 1940, as amended;

(11) Employ and at its pleasure discharge an executive director and such other employees necessary in the administration of the program. Employees of the board shall be nonclassified exempt employees pursuant to the provisions of chapter 53, title 67, Idaho Code.

History.
I.C., § 33-5402, as added by 2000, ch. 213, § 1, p. 573; am. 2008, ch. 275, § 2, p. 784; am. 2013, ch. 110, § 2, p. 261.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 110, rewrote subsection (7), which formerly read: "Select the financial institution or institutions to act as the depository and manager of the program in accordance with this chapter"; added the last sentence in subsection (8); and added subsection (11).

Federal References.
Section 529 of the Internal Revenue Code, referred to in subsections (4) and (10), is compiled as 26 U.S.C.S. § 529.

The securities act of 1933, referred to in subsection (10), is codified as 15 U.S.C.S. § 77a et seq.

The trust indenture act of 1939, referred to in subsection (10), is codified as 15 U.S.C.S. § 77aaa et seq.

The investment company act of 1940, referred to in subsection (10), is codified as 15 U.S.C.S. § 80a-1 et seq.

33-5403. Administration of the program. — (1) The board shall implement the program through its staff, agreements with one (1) or more financial institutions engaged to act as the program's depositories and managers, or through agreements with any public entity or agency, includ-

ing depository, investment or management relationships with other 529 plans or entities.

(2) The board shall implement the program and manage any trust established by the board consistent with sound financial principles and to obtain the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code of 1986, as amended.

(3) Any financial institution engaged by the board shall hold each account in trust for the benefit of this state and the account owner.

(4) The board may delegate to the office of a board member any of its administrative powers and duties, if the board determines that such delegation is necessary for the efficient and effective administration of the program and the board member accepts the delegation. Administrative powers and duties include payroll processing, routine public contacts and public records maintenance. The board member shall be compensated for administrative activities pursuant to section 33-5409, Idaho Code.

History.
I.C., § 33-5403, as added by 2000, ch. 213, § 1, p. 573; am. 2007, ch. 170, § 1, p. 501; am. 2013, ch. 110, § 3, p. 261.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 110, rewrote the section to the extent that a detailed comparison is impracticable.

Federal References.
Section 529 of the internal revenue code of 1986, referred to in subsection (2), is codified as 26 U.S.C.S. § 529.

33-5404. Program requirements. — (1) The program shall be operated through the use of individual accounts. Each account may be opened by any person who desires to save for the qualified higher education expenses of a person. Minors may open an account which cannot be disaffirmed pursuant to section 32-103, Idaho Code. A person may open an account by satisfying each of the following requirements:

(a) Completing an application in the form prescribed by the board. The application shall include the following information:

(i) The name, address and social security number or employer identification number of the contributor;

(ii) The name, address and social security number of the account owner if the account owner is not the contributor;

(iii) The name, address and social security number of the designated beneficiary;

(iv) The certification relating to no excess contributions required by subsection (13) of this section;

(v) Any other information that the board may require;

(b) Paying the one-time application fee established by the board;

(c) Making the minimum contribution required by the board or by opening an account;

(d) Designating the type of account to be opened if more than one (1) type of account is offered.

(2) Any person may make contributions to an account after the account is opened.

(3) Contributions to accounts may be made only in cash.

(4) Account owners may withdraw all or part of the balance from an account on sixty (60) days' notice, or a shorter period as may be authorized by the board, under rules prescribed by the board.

(5) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the board.

(6) On the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

(7) Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate either of the following provisions of this section relating to excess contributions or to investment choice.

(8) Each account shall be maintained separately from each other account under the program.

(9) Separate records and accounting shall be maintained for each account for each designated beneficiary.

(10) No contributor to, account owner of or designated beneficiary of any account may direct the investment of any contributions to an account or the earnings from the account.

(11) The board may transfer accounts held by a depository or manager to a successor depository or manager; provided however, that the transfer to a successor depository or manager does not cause the plan to cease to be a qualified tuition program or subject individual accounts to taxes or penalties.

(12) Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

(13) The board shall adopt rules to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The rules shall address the following:

(a) Procedures for aggregating the total balances of multiple accounts established for a designated beneficiary;

(b) The establishment of a maximum total balance that may be held in accounts for a designated beneficiary;

(c) The board shall review the quarterly reports received from participating financial institutions and certify that the balance in all qualified tuition programs, as defined in section 529 of the Internal Revenue Code, of which that person is the designated beneficiary does not exceed the lesser of:

(i) A maximum college savings amount established by the board from time to time; or

(ii) The cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur;

(d) Requirements that any excess balances with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section.

(14) If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution shall be reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.

(15) The program shall provide statements to each account owner at least once each year within thirty-one (31) days after the twelve (12) month period to which they relate. The statement shall identify the contributions made during a preceding twelve (12) month period, the total contributions made through the end of the period, the value of the account as of the end of this period, distributions made during this period and any other matters that the board requires be reported to the account owner.

(16) Statements and information returns relating to accounts shall be prepared and filed to the extent required by federal or state tax law.

(17) A state or local government or organization described in section 501(c)(3) of the Internal Revenue Code may open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened.

(18) In the case of any account described in subsection (17) of this section, the requirement that a designated beneficiary be designated when an account is opened does not apply and each person who receives an interest in the account as a scholarship shall be treated as a designated beneficiary with respect to the interest.

(19) Any social security numbers, addresses or telephone numbers of individual account holders and designated beneficiaries that come into the possession of the board are confidential, are not public records and shall not be released by the board.

History.

I.C., § 33-5404, as added by 2000, ch. 213, § 1, p. 573; am. 2002, ch. 50, § 2, p. 113; am. 2008, ch. 275, § 3, p. 784; am. 2013, ch. 110, § 4, p. 261.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 110, in the introductory paragraph in subsection (1), inserted "individual" near the end of the first sentence and substituted "Each account" for "An account" and "save for" for "save to pay" in the second sentence; rewrote subsection (11), which formerly read: "If the board terminates the authority of a financial institution to hold accounts and accounts must be moved from that financial institution to another financial institution, the board shall select the financial institution and type of investment to which the balance of the account is moved unless the internal revenue service provides guidance stating that allowing the account owner to select among several financial institutions that are current contractors would not cause a plan to cease to be a qualified tuition program"; and substituted "program" for "financial institution" near the beginning of subsection (15).

Federal References.

Section 529 of the Internal Revenue Code, referred to in paragraph (13)(c), is compiled as 26 U.S.C.S. § 529.

Section 501(c)(3) of the Internal Revenue Code, referred to in subsection (17), is compiled as 26 U.S.C.S. § 501(c)(3).

33-5409. College savings fund. — (1) There is hereby created in the state treasury the "College Savings Fund" to which shall be credited:

(a) Administrative fees and service charges in connection with any agreement, contract or transaction related to the college savings program;

(b) Fees and charges collected to cover costs associated with the powers and duties of the board as required in section 33-5402, Idaho Code;

(c) Interest earned on the investment of idle moneys in the fund, which shall be paid to the fund; and

(d) All other moneys as may be provided by law.

(2) Moneys in the fund shall be continuously appropriated to the board, and any moneys remaining in the fund at the end of each fiscal year shall not be appropriated to any other fund.

(3) Moneys in the fund shall only be used to effect the purposes of this chapter, pursuant to the provisions as prescribed herein. The office of a board member is authorized to receive a portion of the moneys approved by the board to defray costs associated with the implementation, administration and oversight of the college savings program, including the administrative activities delegated pursuant to section 33-5403, Idaho Code.

History.

I.C., § 33-5409, as added by 2007, ch. 225, § 1, p. 678; am. 2013, ch. 110, § 5, p. 261.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 110, deleted "state college savings" preceding "board as required" near the middle of paragraph (1)(b); substituted "the board" for "the treasurer of the state of Idaho" near the middle of subsection (2); and rewrote subsection (3), which formerly read: "Moneys in the fund shall only be used to effect the purposes of this chapter, pursuant to the provisions as prescribed herein; provided however, the office of the state treasurer is authorized to retain a portion of the moneys not to exceed one-half of one percent (0.5%) of the fund's annual revenues to defray costs associated with the implementation, administration and oversight of the college savings program."

CHAPTER 55

IDAHO DIGITAL LEARNING ACADEMY

SECTION.
33-5503. Academy board of directors.
SECTION.
33-5504A. Governmental entity.

33-5503. Academy board of directors. — (1) There is hereby created an academy board of directors which shall be responsible for the development and oversight of the Idaho digital learning academy.

(2) The academy board of directors shall be comprised of eight (8) voting members and one (1) nonvoting member as follows:

(a) Three (3) members shall be superintendents, each elected to a three (3) year term and each representing two (2) educational classification regions as established by the state board of education. One (1) superintendent shall be elected from among the superintendents in regions one and two on a rotating term basis between the two (2) regions; one (1)

superintendent shall be elected from among the superintendents in regions three and four on a rotating term basis between the two (2) regions; and one (1) superintendent shall be elected from among the superintendents in regions five and six on a rotating term basis between the two (2) regions;

(b) Two (2) members shall be principals, each elected to a three (3) year term by the governing body of the Idaho association of school administrators;

(c) Two (2) members shall be citizens at-large who are not professional educators, appointed by the members of the academy board, each to a term of three (3) years;

(d) The state superintendent of public instruction shall be a voting member and shall serve concurrently with the term of office to which the state superintendent is elected; and

(e) One (1) member shall be an ex officio, nonvoting member appointed by the academy board of directors to serve as secretary to the academy board.

(3) For purposes of establishing staggered terms of office, the initial term of office for the superintendent position representing educational classification regions one and two shall be one (1) year, and thereafter shall be three (3) years. The initial term of office for the superintendent position representing educational classification regions three and four shall be two (2) years, and thereafter shall be three (3) years. The superintendent position representing educational classification regions five and six shall be three (3) years. The initial term of office for one (1) principal position shall be one (1) year and thereafter shall be three (3) years, and the initial term of office for the other principal position shall be two (2) years and thereafter shall be three (3) years. The initial term of office for one (1) member at-large shall be one (1) year and thereafter shall be three (3) years, and the term of office for the other member at-large shall be three (3) years.

(4) No voting member shall serve for more than two (2) consecutive full terms. Members of the board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.

(5) The board shall meet in person at least three (3) times annually; none of these three (3) meetings shall be conducted by telephone or video conferencing.

History.

I.C., § 33-5503, as added by 2002, ch. 105, § 1, p. 284; am. 2008, ch. 119, § 2, p. 333; am. 2009, ch. 55, § 2, p. 156.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 55, in subsection (2)(b), deleted "high school" preceding "principals" and "secondary" preceding "school administrators"; and, in the fourth sentence in subsection (3), twice deleted "high school" preceding "principal position."

Effective Dates.

Section 4 of S.L. 2009, ch. 55 declared an emergency, making section 2 of the act effective upon passage and approval. Approved March 25, 2009.

33-5504A. Governmental entity. — (1) The Idaho digital learning academy shall be a governmental entity as provided in section 33-5502, Idaho Code. For the purposes of section 59-1302(15), Idaho Code, the Idaho digital learning academy created pursuant to this chapter shall be deemed a governmental entity. Pursuant to the provisions of section 63-3622O, Idaho Code, sales to or purchases by the Idaho digital learning academy are exempt from payment of the sales and use tax. The Idaho digital learning academy, its employees and its board of directors are subject to the following provisions in the same manner as a traditional public school and the board of trustees of a school district:

(a) Sections 18-1351 through 18-1362, Idaho Code, on bribery and corrupt influence, except as provided by section 33-5204A(2), Idaho Code;

(b) Chapter 2, title 59, Idaho Code, on prohibitions against contracts with officers;

(c) Chapter 7, title 59, Idaho Code, on ethics in government;

(d) Chapter 23, title 67, Idaho Code, on open public meetings;

(e) Chapter 3, title 9, Idaho Code, on disclosure of public records;

(f) Section 33-1216, Idaho Code, on sick and other leave;

(g) Section 33-1217, Idaho Code, on accumulation of unused sick leave;

(h) Section 33-1218, Idaho Code, on sick leave in excess of statutory minimum amounts; and

(i) Section 33-1228, Idaho Code, on severance allowance at retirement.

(2) The Idaho digital learning academy may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of traditional public school districts and other public schools, including those provided by chapter 9, title 6, Idaho Code.

(3) The Idaho digital learning academy shall secure insurance for liability and property loss.

(4) It shall be unlawful for:

(a) Any director to have pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the Idaho digital learning academy, or to accept any reward or compensation for services rendered as a director except as may be otherwise provided in this subsection (4). The board of directors of the Idaho digital learning academy may accept and award contracts involving the Idaho digital learning academy to businesses in which the director or a person related to him by blood or marriage within the second degree of consanguinity has a direct or indirect interest, provided that the procedures set forth in section 18-1361 or 18-1361A, Idaho Code, are followed. The receiving, soliciting or acceptance of moneys of the Idaho digital learning academy for deposit in any bank or trust company, or the lending of moneys by any bank or trust company to the Idaho digital learning academy, shall not be deemed to be a contract pertaining to the maintenance or conduct of the Idaho digital learning academy within the meaning of this section; nor shall the payment of compensation by the Idaho digital learning academy board of directors to any bank or trust

company for services rendered in the transaction of any banking business with the Idaho digital learning academy board of directors be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company within the meaning of this section.

(b) The board of directors of the Idaho digital learning academy to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract require, or will require, the payment or delivery of any Idaho digital learning academy funds, moneys or property to such spouse, except as provided in section 18-1361 or 18-1361A, Idaho Code.

(5) When any relative of any director, or relative of the spouse of a director related by affinity or consanguinity within the second degree, is to be considered for employment in the Idaho digital learning academy, such director shall abstain from voting in the election of such relative, and shall be absent from the meeting while such employment is being considered and determined.

History.

I.C., § 33-5504A, as added by 2008, ch. 119, § 4, p. 335; am. 2009, ch. 55, § 3, p. 156.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 55, in the section catchline, deleted "liability insurance" from the end; in the last sentence in the introductory paragraph in subsection (1), inserted "its employees"; and added subsections (1)(f) through (1)(i).

Effective Dates.

Section 4 of S.L. 2009, ch. 55 declared an emergency and made sections 1 and 3 of that act effective retroactively to July 1, 2008. Approved March 25, 2009.

33-5508. Funding.

STATUTORY NOTES

Compiler's Notes.

Section 13 of S.L. 2013, ch. 326 provide: "The Idaho Digital Learning Academy (IDLA), created pursuant to Chapter 55, Title 33, Idaho Code, shall utilize state appropriated funds for the period July 1, 2013, through June 30, 2014, to achieve the following:

"(1) Tuition charged by IDLA to Idaho students shall not exceed $100 per enrollment.

"(2) Provide remedial coursework for students failing to achieve proficiency in one (1) or more areas of the Idaho Standards Achievement Test.

"(3) Pursuant to the fiscal impact statement for the State Board of Education rule, IDAPA 08.02.03, Docket Number 08-0203-0605, provide advanced learning opportunities for students.

"(4) Pursuant to State Board of Education rule, IDAPA 08.02.03, Docket Number 08-0203-0605, work with institutions of higher education to provide dual credit coursework.

"The preceding list shall not be construed as excluding other instruction and training that may be provided by the Idaho Digital Learning Academy."

CHAPTER 56

IDAHO OPPORTUNITY SCHOLARSHIP PROGRAM [REPEALED EFFECTIVE JULY 1, 2014]

SECTION.

33-5608. Opportunity scholarship program account. [Repealed effective July 1, 2014.]

33-5601. Short title. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 9.

Compiler's Notes.

For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.

Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 and 9 [repealing this section] of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013."

33-5602. Legislative intent. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 9.

Compiler's Notes.

For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.

Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 and 9 [repealing this section] of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013."

33-5603. Purposes. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 9.

Compiler's Notes.

For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.

Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 and 9 [repealing this section] of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013."

33-5604. Definitions. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 9.

Compiler's Notes.

For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.

Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 and 9 [repealing this section] of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013."

33-5605. Academic and financial eligibility. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 9.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 and 9 [repealing this section] of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013."

33-5606. Application process. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 9.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 and 9 [repealing this section] of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013."

33-5607. Selection process — Amount of awards — Conditions. [Repealed effective July 1, 2014.]

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 9.

Compiler's Notes.
For this section as effective until July 1, 2014, see the bound volume.

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 and 9 [repealing this section] of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013."

33-5608. Opportunity scholarship program account. [Repealed effective July 1, 2014.] — (1) There is hereby created an account in the state treasury to be designated the "opportunity scholarship program account."

(2) The account shall consist of moneys appropriated to the account by the legislature, moneys contributed to the account from other sources, and the earnings on such moneys. The executive director of the state board may receive on behalf of the state board any moneys or real or personal property donated, bequeathed, devised or conditionally granted to the state board for purposes of providing funding for such account. Moneys received directly or derived from the sale of such property shall be deposited by the state treasurer in the account.

(3) Earnings from moneys in the account or specified gifts shall be distributed annually to the state board to implement the opportunity scholarship program as provided for under this chapter.

(4) All moneys placed in the account and earnings thereon are hereby perpetually appropriated to the state board for the purpose described in

subsection (3) of this section. All expenditures from the account shall be paid out in warrants drawn by the state controller upon presentation of the proper vouchers. Up to fifty thousand dollars ($50,000) of the annual earnings distribution to the state board may be used by the state board annually for administrative costs related to the implementation of the provisions of this chapter.

(5) Allowable administrative costs include, but are not limited to, operating expenses for the implementation and maintenance of a database, operating expenses to administer the program, personnel costs necessary to administer the program and costs related to promoting awareness of the program.

(6) Pending use, surplus moneys in the account shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code. Interest earned on the investments shall be returned to the account.

History.
I.C., § 33-5608, as added by 2007, ch. 259, § 1, p. 769; am. 2012, ch. 34, § 1, p. 105.

STATUTORY NOTES

Repealed effective July 1, 2014. This section is repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 72, § 9.

Amendments.
The 2012 amendment, by ch. 34, substituted "fifty thousand dollars ($50,000)" for "five percent (5%)" and deleted "but not to exceed seventy-five thousand dollars ($75,000)" following "state board" in the last sentence in subsection (4).

Effective Dates.
Section 11 of S.L. 2013, ch. 72, provided: "Sections 5, 6, 8 and 9 [repealing this section] of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013."

CHAPTER 57

INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

SECTION.
33-5701. Interstate compact on educational opportunity for military children.

33-5701. Interstate compact on educational opportunity for military children. — The "Interstate Compact on Educational Opportunity for Military Children" is hereby enacted into law and entered into by this state with any other states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

ARTICLE I

PURPOSE

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district(s) or variations in entrance/age requirements.

B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content or assessment.

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

D. Facilitating the on-time graduation of children of military families.

E. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

F. Providing for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

G. Promoting coordination between this compact and other compacts affecting military children.

H. Promoting flexibility and cooperation between the educational system, parents and the student in order to achieve educational success for the student.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. "Active duty" means: full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. sections 1209 and 1211.

B. "Children of military families" means: a school-aged child(ren), enrolled in kindergarten through twelfth grade, in the household of an active duty member.

C. "Compact commissioner" means: the voting representative of each compacting state appointed pursuant to article VIII of this compact.

D. "Deployment" means: the period one (1) month prior to the service members' departure from their home station on military orders though six (6) months after return to their home station.

E. "Education(al) records" means: those official records, files, and data directly related to a student and maintained by the school or local education agency including, but not limited to, records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

F. "Extracurricular activities" means: a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

G. "Interstate Commission on Educational Opportunity for Military Children" means: the commission that is created under article IX of this compact, which is generally referred to as the interstate commission.

H. "Local education agency" means: a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions.

I. "Member state" means: a state that has enacted this compact.

J. "Military installation" means: a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the department of defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other United States territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

K. "Nonmember state" means: a state that has not enacted this compact.

L. "Receiving state" means: the state to which a child of a military family is sent, brought, or caused to be sent or brought.

M. "Rule" means: a written statement by the interstate commission promulgated pursuant to article XII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

N. "Sending state" means: the state from which a child of a military family is sent, brought, or caused to be sent or brought.

O. "State" means: a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other United States territory.

P. "Student" means: the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through twelfth grade.

Q. "Transition" means: 1) the formal and physical process of transferring from school to school; or 2) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

R. "Uniformed service(s)" means: the army, navy, air force, marine corps, and coast guard as well as the commissioned corps of the national oceanic and atmospheric administration, and public health services.

S. "Veteran" means: a person who served in the uniformed services and who was discharged or released therefrom under conditions other than dishonorable.

ARTICLE III

APPLICABILITY

A. Except as otherwise provided in section B. of this article, this compact shall apply to the children of:

1. Active duty members of the uniformed services as defined in this compact, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. section 1209 and 1211;
2. Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one (1) year after medical discharge or retirement; and
3. Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one (1) year after death.

B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

C. The provisions of this compact shall not apply to the children of:

1. Inactive members of the national guard and military reserves;
2. Members of the uniformed services now retired, except as provided in section A. of this article;
3. Veterans of the uniformed services, except as provided in section A. of this article; and
4. Other United States department of defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

ARTICLE IV

EDUCATIONAL RECORDS AND ENROLLMENT

A. Unofficial or "hand-carried" educational records. In the event that official educational records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the interstate commission. Upon receipt of the unofficial educational records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official educational records/transcripts. Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official educational records from the school

in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official educational records to the school in the receiving state within ten (10) days or within such time as is reasonably determined under the rules promulgated by the interstate commission.

C. Immunizations. Compacting states shall give thirty (30) days from the date of enrollment, or within such time as is reasonably determined under the rules promulgated by the interstate commission, for students to obtain any immunization(s) required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty (30) days or within such time as is reasonably determined under the rules promulgated by the interstate commission.

D. Kindergarten and first grade entrance age. Except as provided for elsewhere in this subsection D., students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level, including kindergarten, from a local education agency in the sending state at the time of transition. Provided however, that the provisions of section 33-201, Idaho Code, relating to requirements for kindergarten and first grade shall apply. A student who has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on his or her validated level from an accredited school in the sending state.

ARTICLE V

PLACEMENT AND ATTENDANCE

A. Course placement. When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes, but is not limited to, honors, international baccalaureate, advanced placement, vocational, technical and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course(s).

B. Educational program placement. The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state. Such programs include, but are not limited to: 1) gifted and talented programs; and 2) English as a second language (ESL). This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. Special education services. 1) In compliance with the federal requirements of the individuals with disabilities education act (IDEA), 20 U.S.C.A. section 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on his or her current individualized education program (IEP); and 2) In compliance with the requirements of section 504 of the rehabilitation act, 29 U.S.C.A. section 794, and with title II of the Americans with disabilities act, 42 U.S.C.A. sections 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or title II plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

D. Placement flexibility. Local education agency administrative officials shall have flexibility in waiving course/program prerequisites, or other preconditions for placement in courses/programs offered under the jurisdiction of the local education agency.

E. Absence as related to deployment activities. A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

ARTICLE VI

ELIGIBILITY

A. Eligibility for enrollment.

1. Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

2. A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

3. A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he or she was enrolled while residing with the custodial parent.

B. Eligibility for extracurricular participation. State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

ARTICLE VII

GRADUATION

In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

A. Waiver requirements. Local education agency administrative officials shall waive specific courses required for graduation if similar coursework has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams. States shall accept: 1) exit or end-of-course exams required for graduation from the sending state; or 2) national norm-referenced achievement tests; or 3) alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her senior year, then the provisions of article VII, section C. shall apply.

C. Transfers during senior year. Should a military student transferring at the beginning or during his or her senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one (1) of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with sections A. and B. of this article.

ARTICLE VIII

STATE COORDINATION

A. Each member state shall, through the creation of a state council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies and military installations concerning the state's participation in, and compliance with, this compact and interstate commission activities. While each member state may determine the membership of its own state council, its membership must include at least: the state superintendent of education, a superintendent of a school district with a high concentration of military children, a representative from a military installation, one (1) representative each from the legislative and executive branches of government, and other offices and stakeholder groups the state council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children

may appoint a superintendent from another school district to represent local education agencies on the state council.

B. The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the governor or as otherwise determined by each member state.

D. The compact commissioner and the military family education liaison designated herein shall be ex officio members of the state council, unless either is already a full voting member of the state council.

ARTICLE IX

INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the interstate commission are the formation of public policy and are a discretionary state function. The interstate commission shall:

A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. Consist of one (1) interstate commission voting representative from each member state who shall be that state's compact commissioner.

1. Each member state represented at a meeting of the interstate commission is entitled to one (1) vote.
2. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.
3. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the interstate commission, the governor or state council may delegate voting authority to another person from their state for a specified meeting.
4. The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.

C. Consist of ex officio, nonvoting representatives who are members of interested organizations. Such ex officio members, as defined in the bylaws, may include, but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States department of defense, the education commission of the states, the interstate agreement on the qualification of educational personnel and other interstate compacts affecting the education of children of military members.

D. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

E. Establish an executive committee, whose members shall include the officers of the interstate commission and such other members of the interstate commission as determined by the bylaws. Members of the executive committee shall serve a one (1) year term. Members of the executive committee shall be entitled to one (1) vote each. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The United States department of defense shall serve as an ex officio, nonvoting member of the executive committee.

F. Establish bylaws and rules that provide for conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

G. Give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds (2/3) vote that an open meeting would be likely to:

1. Relate solely to the interstate commission's internal personnel practices and procedures;
2. Disclose matters specifically exempted from disclosure by federal and state statute;
3. Disclose trade secrets or commercial or financial information which is privileged or confidential;
4. Involve accusing a person of a crime or formally censuring a person;
5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
6. Disclose investigative records compiled for law enforcement purposes; or
7. Specifically relate to the interstate commission's participation in a civil action or other legal proceeding.

H. Shall cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the interstate commission.

I. Shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

J. Shall create a process that permits military officials, education officials and parents to inform the interstate commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the interstate commission or any member state.

ARTICLE X

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

A. To provide for dispute resolution among member states.

B. To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact.

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules and actions.

D. To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means including, but not limited to, the use of judicial process.

E. To establish and maintain offices which shall be located within one or more of the member states.

F. To purchase and maintain insurance and bonds.

G. To borrow, accept, hire or contract for services of personnel.

H. To establish and appoint committees including, but not limited to, an executive committee as required by article IX, section E., which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder.

I. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the interstate commission.

O. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission.

P. To coordinate education, training and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity.

Q. To establish uniform standards for the reporting, collecting and exchanging of data.

R. To maintain corporate books and records in accordance with the bylaws.

S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

T. To provide for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

ARTICLE XI

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. The interstate commission shall, by a majority of the members present and voting, within twelve (12) months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact including, but not limited to:

1. Establishing the fiscal year of the interstate commission;
2. Establishing an executive committee and such other committees as may be necessary;
3. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the interstate commission;
4. Providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each such meeting;
5. Establishing the titles and responsibilities of the officers and staff of the interstate commission;
6. Providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations.
7. Providing "start up" rules for initial administration of the compact.

B. The interstate commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a

treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the interstate commission.

C. Executive committee, officers and personnel.

1. The executive committee shall have such authority and duties as may be set forth in the bylaws including, but not limited to:

a. Managing the affairs of the interstate commission in a manner consistent with the bylaws and purposes of the interstate commission;

b. Overseeing an organizational structure within, and appropriate procedures for, the interstate commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

c. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the interstate commission.

2. The executive committee may, subject to the approval of the interstate commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member of the interstate commission. The executive director shall hire and supervise such other persons as may be authorized by the interstate commission.

D. The interstate commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the interstate commission's executive director and employees or interstate commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The interstate commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other

appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

3. To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE XII

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. Rulemaking authority. The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this act, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect.

B. Rulemaking procedure. Rules shall be made pursuant to a rulemaking process that substantially conforms to the model state administrative procedure act of 1981, as amended, as may be appropriate to the operations of the interstate commission.

C. Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission's authority.

D. If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

ARTICLE XIII

OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION

A. Oversight 1. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission.

3. The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, this compact or promulgated rules.

B. Default, technical assistance, suspension and termination. If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the interstate commission shall:

1. Provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default.

2. Provide remedial training and specific technical assistance regarding the default.

3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

5. The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination, including obligations, the performance of which extends beyond the effective date of suspension or termination.

6. The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

7. The defaulting state may appeal the action of the interstate commission by petitioning the United States district court for the District of

Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

C. Dispute resolution. 1. The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

2. The interstate commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement. 1. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XIV

FINANCING OF THE INTERSTATE COMMISSION

A. The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

C. The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall by audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE XV

MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten (10) of the states. The effective date shall be no earlier than December 1, 2007. Thereafter, it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states.

C. The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XVI

WITHDRAWAL AND DISSOLUTION

A. Withdrawal. 1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one (1) year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member jurisdiction.

3. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

B. Dissolution of compact. 1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs

of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII

SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVIII

BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other laws. 1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

2. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

B. Binding effect of the compact. 1. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the member states.

2. All agreements between the interstate commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

History.

I.C., § 33-5701, as added by 2013, ch. 301, § 2, p. 792.

STATUTORY NOTES

Compiler's Notes.

With the passage and approval of S.L. 2013, ch. 301, Idaho became the 45th state to adopt the interstate compact on educational opportunity for military children. See *http://www.mic3.net*.

The abbreviations and letters enclosed in parentheses so appeared in the law as enacted.

TITLE 34

ELECTIONS

CHAPTER.
1. Definitions, §§ 34-102, 34-106.
2. Duties of Officers, § 34-217.
3. Election Precincts and Judges, §§ 34-301, 34-304, 34-308.
4. Voters — Privileges, Qualifications and Registration, §§ 34-404, 34-406, 34-408A, 34-411, 34-411A, 34-439, 34-439A.
5. Political Parties — Organization, § 34-502.
6. Time of Elections — Officers Elected, §§ 34-601, 34-602, 34-622, 34-624.
7. Nominations — Conventions — Primary Elections, §§ 34-702A, 34-704, 34-708A, 34-713, 34-717, 34-731 — 34-739.
9. Ballots, §§ 34-901 — 34-903, 34-904, 34-904A, 34-908, 34-910.
10. Absentee Voting, §§ 34-1002, 34-1003, 34-1005, 34-1012, 34-1013.
11. Conduct of Elections, §§ 34-1103, 33-1106, 33-1008, 33-1113, 34-1114.
12. Canvass of Votes, §§ 34-1201, 34-1205, 34-1206, 34-1208.
14. Uniform District Election Law, §§ 34-1401, 34-1402, 34-1404 — 34-1408, 34-1410 — 34-1413.
17. Recall Elections, §§ 34-1702 — 34-1704, 34-1706, 34-1707, 34-1711 — 34-1713.
18. Initiative and Referendum Elections, §§ 34-1801A, 34-1802, 34-1804, 34-1805, 34-1807.
19. Congressional Districts, §§ 34-1902, 34-1903.
23. Recount of Ballots, §§ 34-2301 — 34-2309, 34-2313.
24. Voting by Machine or Vote Tally System, §§ 34-2409, 34-2412, 34-2413, 34-2424, 34-2427.
25. Election Campaign Fund. [Repealed.]

CHAPTER 1

DEFINITIONS

SECTION.
34-102. "Primary election" defined — Purposes.
34-106. Limitation upon elections.

34-102. "Primary election" defined — Purposes. — "Primary election" means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties. Primary elections shall be held on the third Tuesday of May in each even-numbered year.

History.

1970, ch. 140, § 2, p. 351; am. 1971, ch. 194, § 2, p. 881; am. 1975, ch. 174, § 11, p. 469; am. 1979, ch. 309, § 1, p. 833; am. 2011, ch. 11, § 10, p. 24; am. 2012, ch. 33, § 1, p. 103.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 11, substituted "third Tuesday of May" for "fourth Tuesday of May" in both paragraphs.

The 2012 amendment, by ch. 33, deleted the former second paragraph, which read: "'Presidential primary' or 'presidential preference primary' means an election held for the purpose of allowing voters to express their choice for candidates for nominations for president of the United States. Presidential primary elections shall be held in conjunction with the primary election, on the third Tuesday of May in each presidential election year."

Effective Dates.

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive

to January 1, 2011. Approved February 23, 2011.

Section 15 of S.L. 2012, ch. 33 declared an emergency. Approved March 1, 2012.

34-106. Limitation upon elections. — On and after January 1, 2011, notwithstanding any other provisions of the law to the contrary, there shall be no more than two (2) elections conducted in any county in any calendar year, except as provided in this section, and except that elections to fill vacancies in the United States house of representatives shall be held as provided in the governor's proclamation.

(1) The dates on which elections may be conducted are:

(a) The third Tuesday in May of each year; and

(b) The Tuesday following the first Monday in November of each year.

(c) In addition to the elections specified in paragraphs (a) and (b) of this subsection (1) and subsection (7) of this section, an emergency election may be called upon motion of the governing board of a political subdivision. An emergency exists when there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for a national or local defense, or it is necessary to do emergency work to safeguard life, health or property.

(2) Candidates for office elected in May shall take office on the date specified in the certificate of election but not more than sixty (60) days following the election.

(3) Candidates for office elected in November shall take office as provided in the constitution, or on January 1, next succeeding the November election.

(4) The governing board of each political subdivision subject to the provisions of this section, which, prior to January 1, 2011, conducted an election for members of that governing board on a date other than a date permitted in subsection (1) of this section, shall establish as the election date for that political subdivision the date authorized in subsection (1) of this section which falls nearest the date on which elections were previously conducted, unless another date is established by law.

(5) The secretary of state is authorized to provide such assistance as necessary, and to prescribe any needed rules or interpretations for the conduct of election authorized under the provisions of this section.

(6) Water districts governed by chapter 6, title 42, Idaho Code, are exempt from the provisions of this section.

(7) Community colleges governed by chapter 21, title 33, Idaho Code, and school districts are subject to the limitations specified in subsection (1) of this section, except that school districts may also hold an election on the second Tuesday in March of each year and on the last Tuesday in August of each year on bonded indebtedness and property tax levy questions.

(8) Initiative, referendum, bond, levy and any other ballot question elections conducted by any political subdivision shall be held on the nearest date authorized in subsection (1) of this section which falls more than sixty (60) days after the clerk of the political subdivision orders that such election shall be held in May and November of even-numbered years and fifty (50) days for all other elections, unless otherwise provided by law. Ballot

language for any question to be placed on the ballot shall be submitted to the county clerk at least sixty (60) days before the election held in May and November of even-numbered years and at least fifty (50) days for all other elections.

(9) Recall elections may be held on any of the four (4) dates authorized in subsections (1) and (7) of this section that fall more than forty-five (45) days after the clerk of the political subdivision orders that such election shall be held.

(10) Irrigation districts governed by title 43, Idaho Code, are subject to the limitations specified in subsection (1) of this section, except that irrigation districts may also hold an election on the first Tuesday in February of each year and on the first Tuesday in August of each year on questions required to be voted upon by title 43, Idaho Code.

History.

I.C., § 34-106, as added by 1992, ch. 176, § 2, p. 553; am. 1993, ch. 313, § 3, p. 1157; am. 2007, ch. 92, § 2, p. 271; am. 2009, ch. 341, § 55, p. 993; am. 2010, ch. 185, § 6, p. 382; am. 2011, ch. 11, § 11, p. 24; am. 2013, ch. 135, § 3, p. 307.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

The 2010 amendment, by ch. 185, in subsection (8), deleted "except school districts" following "any political subdivision" and inserted the reference to subsection (7).

The 2011 amendment, by ch. 11, in paragraph (1)(c) inserted "and subsection (7) of this section" in the first sentence and deleted the former last sentence, which read: "Such a special election, if conducted by the county clerk, shall be conducted at the expense of the political subdivision submitting the question"; in subsection (8), deleted "recall" following "referendum" near the beginning and substituted "subsection (1) of this section" for "subsections (1) and (7) of this section" near the middle; and rewrote subsection (9), which formerly read: "Recall elections may be held on a different date as authorized in subsections (1) and (7), and on the second Tuesday of March and the last Tuesday of August, as determined by the county clerk after receipt of necessary petitions."

The 2013 amendment, by ch. 135, in subsection (8), substituted "sixty (60) days" for "forty-five (45) days" and inserted "in May and November of even-numbered years and fifty (50) days for all other elections" in the first sentence and added the last sentence.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

34-107. "Residence" defined.

JUDICIAL DECISIONS

Cited in: Bradbury v. Idaho Judicial Council, 149 Idaho 107, 233 P.3d 38 (2009).

CHAPTER 2

DUTIES OF OFFICERS

SECTION.
34-217. Retention of county election records.

34-217. Retention of county election records. — County election records shall be maintained by the county clerk for the time periods outlined in this section. Records shall be maintained for the period specified beginning with the date the record is created or has become no longer valid, whichever is greater.

(1) The following records shall be retained for not less than five (5) years:

(a) Voter registration cards for electors whose registration has been terminated.

(b) Combination election record and poll book.

(c) Declaration of candidacy.

(d) Maps of precinct boundaries with legal descriptions.

(e) List of absentee voters.

(2) The following shall be retained for two (2) years:

(a) Correspondence relating to an elector's voter registration.

(b) Completed absentee ballot request forms.

(c) Tally books.

(d) Voted ballots.

(e) Any ballots that were required to be duplicated before being counted.

(3) The following shall be maintained for one (1) year:

(a) Absentee ballot affidavit envelopes.

(b) Notice of election.

(c) Personal identification affidavit.

(d) Unvoted ballots from the primary election.

(e) Ballot tracking logs.

(f) Automated tabulation election logs.

(g) Copy of the election definition and program used in tabulating ballots electronically and in the ballot marking device.

(h) Record of the number of ballots printed and furnished to each polling place.

(4) Other election supplies including, but not limited to, unused ballots, official election ballot identification and spoiled ballots may be disposed of sixty (60) days following the deadline for requesting a recount or filing an election contest pursuant to chapters 20 and 21, title 34, Idaho Code.

History.
I.C., § 34-217, as added by 2011, ch. 285, § 2, p. 778; am. 2012, ch. 211, § 2, p. 571; am. 2013, ch. 285, § 1, p. 735.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 211, redesignated former paragraphs (3)(a), (e), and (h) as paragraphs (2)(c), (d) and (e), redesignated the other paragraphs in subsection (3) accordingly.

The 2013 amendment, by ch. 285, substituted "ballot identification" for "stamps" in subsection (4).

Effective Dates.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

CHAPTER 3

ELECTION PRECINCTS AND JUDGES

SECTION.
34-301. Establishment of election precincts by county commissioners — Lists and maps to be furnished to secretary of state.
34-304. Challengers — Watchers.
34-308. Mail ballot precinct.

34-301. Establishment of election precincts by county commissioners — Lists and maps to be furnished to secretary of state. — The board of county commissioners in each county shall establish a convenient number of election precincts therein. The board of county commissioners may establish an absentee voting precinct for each legislative district within the county. The boundaries of such absentee precincts shall be the same as those of the legislative districts for which they were established. The board shall have the authority to create new or consolidate established precincts only within the boundaries of legislative districts. No county shall have less than two (2) precincts. This board action shall be done no later than January 15 in a general election year. The January 15 deadline shall be waived during a general election year in which a legislative or court ordered redistricting plan is adopted. In such cases, any precinct boundary adjustments shall be accomplished by the county commissioners as soon as is practicable.

The county clerk of each county shall provide, and the secretary of state shall maintain in his office, a current and accurate report of the following:

(a) A list of all precincts within the county;

(b) A map of all precincts within the county;

(c) A count of voters registered for the latest general election, by precinct;

(d) A count of votes cast at the latest general election, by precinct.

History.

1970, ch. 140, § 32, p. 351; am. 1971, ch. 210, § 1, p. 919; am. 1972, ch. 141, § 1, p. 308; am. 1973, ch. 177, § 1, p. 393; am. 1974, ch. 212, § 1, p. 1557; am. 1976, ch. 73, § 1, p. 242; am. 1977, ch. 8, § 3, p. 16; am. 1992, ch. 152, § 1, p. 458; am. 2009, ch. 52, § 13, p. 136.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 52, in the fourth sentence, deleted "provided by section 67-202, Idaho Code" from the end.

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

34-304. Challengers — Watchers. — The county clerk shall, upon receipt of a written request, such request to be received no later than twelve

(12) days prior to the day of election, direct that the election judges permit one (1) person authorized by each political party, if the election is a partisan election, to be at the polling place for the purpose of challenging voters, and shall, if requested, permit any one (1) person authorized by a candidate, several candidates or political party, to be present to serve as a watcher to observe the conduct of the election. Such authorization shall be evidenced by a writing signed by the county chairman and secretary of the political party, if the election is a partisan election, or by the candidate or candidates, and filed with the county clerk. Where the issue before the electors is other than the election of officers, the clerk shall, upon receipt of a written request, such request to be received no later than twelve (12) days prior to the date of voting on the issue or issues, direct that the election judges permit one (1) pro and one (1) con person to be at the polling place for the purpose of challenging voters and to observe the conduct of the election. Such authorization shall be evidenced in writing signed by the requesting person and shall state which position relative to the issue or issues the person represents. Persons who are authorized to serve as challengers or watchers shall wear a visible name tag which includes their respective titles. A watcher is entitled to observe any activity conducted at the location at which the watcher is serving, provided however, that the watcher does not interfere with the orderly conduct of the election. If the watchers are present at the polling place when ballots are counted they shall not absent themselves until the polls are closed. A watcher serving at a central counting station may be present at any time the station is open for the purpose of processing or preparing to process election results and until the election officers complete their duties at the station. If the county clerk does not receive the list of names of those desired to be present for the purpose of either poll watching or challenging within the time prescribed above, the clerk shall not allow the presence of such persons later seeking to serve in those capacities.

History.
1970, ch. 140, § 35, p. 351; am. 1972, ch. 141, § 2, p. 308; am. 1973, ch. 304, § 3, p. 646; am. 2006, ch. 70, § 1, p. 214; am. 2009, ch. 341, § 56, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, twice substituted "twelve (12) days" for "five (5) days" and, in the first and second sentences, inserted "if the election is a partisan election."

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

34-308. Mail ballot precinct. — A precinct within the county which contains no more than one hundred twenty-five (125) registered electors at the last general election, may be designated by the board of county commissioners a mail ballot precinct no later than April 1 in an even-numbered year. Such a designation shall apply thereafter to all elections conducted within the precinct until revoked by the board of county commissioners. Having designated a mail ballot precinct, there shall be no voting

place established within the precinct. Elections in a mail ballot precinct shall be conducted in a manner consistent with absentee voting with the following special provisions.

(1) The clerk shall issue a ballot, by mail, to every registered voter in a mail ballot precinct, and shall affix to the return envelope, postage sufficient to return the ballot.

(2) The ballot shall be mailed no sooner than twenty-four (24) days prior to the election day and no later than the fourteenth day prior to the election.

(3) The clerk shall make necessary provisions to segregate mail ballot precinct ballots by precinct, and for all purposes of the election, the precinct integrity shall be maintained.

(4) The clerk shall make available in the office of the clerk, registration on election day for any individual who is eligible to vote and who resides in a mail ballot precinct and has not previously registered. The clerk shall provide an official polling place in the office of the clerk and a qualified elector who registers on election day and resides in a mail ballot precinct shall be allowed to vote at the office of the clerk.

(5)(a) Except as provided in subsection (5)(b) of this section, electors who have designated a political party affiliation pursuant to section 34-404, Idaho Code, shall receive the primary election ballot for that party pursuant to sections 34-904 and 34-904A, Idaho Code.

(b) Electors who have designated a political party affiliation pursuant to section 34-404, Idaho Code, may receive the primary election ballot of a political party other than the political party such elector is affiliated with if such other political party has provided notification to the secretary of state that identifies the political party such elector is affiliated with, as provided for in section 34-904A(2)(b), Idaho Code.

(6) For "unaffiliated" electors, in order to receive a political party's primary election ballot, pursuant to section 34-904A, Idaho Code, the county clerk shall mail a ballot request form for the primary election ballot to the electors in a mail ballot precinct for the electors to use in selecting the party ballot they choose to receive.

(a) In the event that more than one (1) political party allows electors designated as "unaffiliated" to vote in their party's primary election pursuant to section 34-904A, Idaho Code, an elector designated as "unaffiliated" shall indicate on the form such elector's choice of the political party's primary election ballot in order to vote in that party's primary election.

(b) In the event no more than one (1) political party allows electors designated as "unaffiliated" to vote in their party's primary election pursuant to section 34-904A, Idaho Code, an elector designated as "unaffiliated" shall indicate on the form that political party's primary election ballot in order to vote in that political party's primary election.

(c) If an elector designated as "unaffiliated" is not permitted to vote in a political party's primary election as provided for in section 34-904A, Idaho Code, such elector shall receive a nonpartisan ballot.

(d) If an elector designated as "unaffiliated" does not indicate on the form a choice of political party's primary election ballot, such elector shall receive a nonpartisan ballot.

History.
I.C., § 34-308, as added by 2004, ch. 165, § 1, p. 540; am. 2011, ch. 319, § 2, p. 929.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 319, added subsections (5) and (6).

Legislative Intent.
Section 1 of S.L. 2011, ch. 319 provided: "Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party's candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections."

CHAPTER 4

VOTERS — PRIVILEGES, QUALIFICATIONS AND REGISTRATION

SECTION.
34-404. Registration of electors.
34-406. Appointment of registrars.
34-408A. Election day registration.
34-411. Application for registration — Contents.
34-411A. Primary elections — Changing party affiliation — Unaffiliated electors.
34-439. Disclosures in elections to authorize bonded indebtedness.
34-439A. Disclosures in elections to authorize levy.

34-402. Qualifications of electors.

RESEARCH REFERENCES

A.L.R. — Validity of residency and precinct-specific requirements of state voter registration statutes. 57 A.L.R.6th 419.

34-404. Registration of electors. — (1) All electors must register before being able to vote at any primary, general, special, school or any other election governed by the provisions of title 34, Idaho Code. Registration of a qualified person occurs when a legible, accurate and complete registration card is received in the office of the county clerk or is received at the polls pursuant to section 34-408A, Idaho Code.

(2) Each elector may select on the registration card an affiliation with a political party qualified to participate in elections pursuant to section 34-501, Idaho Code, or may select to be designated as "unaffiliated." The county clerk shall record the party affiliation or "unaffiliated" designation so selected as part of the elector's registration record. If an elector shall fail or refuse to make such a selection, the county clerk shall enter on the registration records that such elector is "unaffiliated."

(3) In order to provide an elector with the appropriate primary election ballot, pursuant to section 34-904A, Idaho Code, the poll book for primary elections shall include the party affiliation or designation as "unaffiliated" for each elector so registered. An "unaffiliated" elector shall declare to the poll worker which primary election ballot the elector chooses to vote in, pursuant to section 34-904A, Idaho Code, and the poll worker or other authorized election personnel shall record such declaration in the poll book. The poll book shall contain checkoff boxes to allow the poll worker or other authorized election personnel to record such "unaffiliated" elector's selection.

(4) In order to provide electors who are already registered to vote, and who remain registered electors, with an opportunity to select a party affiliation or to select their status as "unaffiliated," the poll book for the 2012 primary election shall include checkoff boxes by which the poll worker or other appropriate election personnel shall record such elector's choice of party affiliation or choice to be designated as "unaffiliated." After the 2012 primary election, the county clerk shall record the party affiliation or "unaffiliated" designation so selected in the poll book as part of such an elector's record within the voter registration system as provided for in section 34-437A, Idaho Code.

(5) After the 2012 primary election, electors who remain registered voters and who did not vote in the 2012 primary election or who have not selected party affiliation or who have not selected to be designated as "unaffiliated," shall be designated as "unaffiliated" and the county clerk shall record that designation for each such elector within the voter registration system as provided for in section 34-437A, Idaho Code.

History.

1970, ch. 140, § 39, p. 351; am. 1971, ch. 192, § 2, p. 874; am. 1972, ch. 197, § 1, p. 498; am. 1987, ch. 256, § 2, p. 519; am. 1997, ch. 356, § 1, p. 1051; am. 2011, ch. 319, § 3, p. 929.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 319, added subsections (2) through (5) and added the subsection (1) designation to the existing provisions.

Legislative Intent.

Section 1 of S.L. 2011, ch. 319 provided: "Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party's candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections."

RESEARCH REFERENCES

A.L.R. — Validity of statute restricting voter registration solicitations by third parties or organizations. 55 A.L.R.6th 599.

Validity of residency and precinct-specific requirements of state voter registration statutes. 57 A.L.R.6th 419.

34-406. Appointment of registrars. — (1) The county clerk shall provide for voter registration in the clerk's office and may appoint registrars to assist in voter registration throughout the county.

(2) The county clerk shall provide all political parties within the county with a supply of the registration form prescribed in section 34-411, Idaho Code.

History.

I.C., § 34-406, as added by 1994, ch. 67, § 3, p. 137; am. 2011, ch. 319, § 4, p. 929.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 319, added the subsection designations and, in subsection (2), deleted "mail" preceding "registration" and substituted "section 34-411" for "section 34-410".

Legislative Intent.

Section 1 of S.L. 2011, ch. 319 provided: "Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party's candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections."

34-408. Closing of register — Time limit.

RESEARCH REFERENCES

A.L.R. — Validity of statute limiting time period for voter registration. 56 A.L.R.6th 523.

34-408A. Election day registration. — An individual who is eligible to vote may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence, by completing a registration card, making an oath in the form prescribed by the secretary of state and providing proof of residence. An individual may prove residence for purposes of registering by:

(1) Showing an Idaho driver's license or Idaho identification card issued through the department of transportation; or

(2) Showing any document which contains a valid address in the precinct together with a picture identification card; or

(3) Showing a current valid student photo identification card from a

postsecondary educational institution in Idaho accompanied with a current student fee statement that contains the student's valid address in the precinct.

Election day registration provided in this section shall apply to all elections conducted under title 34, Idaho Code, and to school district and municipal elections.

An individual who is eligible to vote may also register, upon providing proof of residence, at the "absent electors' polling place" provided in section 34-1006, Idaho Code.

History.

I.C., § 34-408A, as added by 1994, ch. 67, § 5, p. 137; am. 1995, ch. 215, § 3, p. 747; am. 1997, ch. 356, § 2, p. 1051; am. 2011, ch. 285, § 3, p. 778.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 285, inserted "Idaho" preceding "driver's license" in subsection (1); and, in subsection (3), inserted "photo" preceding "identification card" near the beginning and deleted "together with a picture identification card" at the end.

Effective Dates.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

34-410. Mail registration.

RESEARCH REFERENCES

A.L.R. — Preemption of state election laws by Help America Vote Act. 47 A.L.R. Fed 2d 81.

34-411. Application for registration — Contents. — (1) Each elector who requests registration shall supply the following information under oath or affirmation:

(a) Full name and sex.

(b) Mailing address, residence address or any other necessary information definitely locating the elector's residence.

(c) The period of time preceding the date of registration during which the elector has resided in the state.

(d) Whether or not the elector is a citizen.

(e) That the elector is under no legal disqualifications to vote.

(f) The county and state where the elector was previously registered, if any.

(g) Date of birth.

(h) Current driver's license number or identification card issued by the Idaho transportation department. In the absence of an Idaho driver's license or state issued identification card, the last four (4) digits of the elector's social security number.

(2) As provided for in section 34-404, Idaho Code, each elector shall select an affiliation with a political party qualified to participate in elections pursuant to section 34-501, Idaho Code, or select to be designated as

"unaffiliated." The selection of party affiliation or designation as "unaffiliated" shall be maintained within the voter registration system as provided for in section 34-437A, Idaho Code. If an elector shall fail or refuse to make such a selection, the county clerk shall record as "unaffiliated" such elector within the voter registration system as provided for in section 34-437A, Idaho Code.

(3) Any elector who shall supply any information under subsection (1) of this section, knowing it to be false, is guilty of perjury.

(4) Each elector who requests registration may, at the elector's option, supply the elector's telephone number. If the telephone number is supplied by the elector, the telephone number shall be available to the public.

History.

1970, ch. 140, § 46, p. 351; am. 1971, ch. 192, § 6, p. 874; am. 1972, ch. 392, § 4, p. 1131; am. 1988, ch. 233, § 1, p. 461; am. 1995, ch. 215, § 7, p. 747; am. 2003, ch. 48, § 5, p. 181; am. 2011, ch. 319, § 5, p. 929; am. 2012, ch. 211, § 3, p. 571.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 319, made neutral gender changes in subsection (1); added subsection (2); and redesignated former subsections (2) and (3) as present subsections (3) and (4).

The 2012 amendment, by ch. 211, in paragraph (1)(h), inserted "identification card issued by the Idaho transportation department" and "or state issued identification card."

Legislative Intent.

Section 1 of S.L. 2011, ch. 319 provided: "Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party's candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections."

Effective Dates.

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

JUDICIAL DECISIONS

Open Primary.

Neither the Republican party nor the Idaho secretary of state were entitled to summary judgment as to whether Idaho's open primary election statutes, § 34-904 and this section, violated the party's First Amendment right to freedom of association because fact issues remained as to the effect of "cross over" voting on the party's message and its selection of candidates for office. Idaho Republican Party v. Ysursa, 660 F. Supp. 2d 1195 (D. Idaho 2009).

34-411A. Primary elections — Changing party affiliation — Unaffiliated electors. — (1) For a primary election, an elector may change such elector's political party affiliation or become "unaffiliated" by filing a signed form with the county clerk no later than the last day a candidate may file for partisan political office prior to such primary election, as provided for in section 34-704, Idaho Code. An "unaffiliated" elector may affiliate with the party of the elector's choice by filing a signed form up to and including

election day. The application form described in section 34-1002, Idaho Code, shall also be used for this purpose.

(2) For a primary election, an "unaffiliated" elector may select a political party affiliation only prior to voting in the primary election. An elector may make such selection on or before election day, by declaring such political party affiliation to the poll worker or other appropriate election personnel. The poll worker or other appropriate election personnel shall then record in the poll book the elector's choice. After the primary election, the county clerk shall record the party affiliation so recorded in the poll book as part of such elector's record within the voter registration system as provided for in section 34-437A, Idaho Code.

History.

I.C., § 34-411A, as added by 2011, ch. 319, § 6, p. 929; am. 2012, ch. 211, § 4, p. 571.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 211, inserted the second sentence in subsection (1).

Legislative Intent.

Section 1 of S.L. 2011, ch. 319 provided: "Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party's candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections."

Effective Dates.

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

34-412. Qualifications for registration.

RESEARCH REFERENCES

A.L.R. — Validity of statute requiring proof and disclosure of information as condition of registration to vote. 48 A.L.R.6th 181.

34-431. Challenges of entries in election register.

RESEARCH REFERENCES

A.L.R. — Validity of statute providing for purging voter registration lists of inactive voters. 51 A.L.R.6th 287.

34-432. Correction of election register from challenges at election.

RESEARCH REFERENCES

A.L.R. — Validity of statute providing for purging voter registration lists of inactive voters. 51 A.L.R.6th 287.

34-437A. Statewide list of registered electors.

RESEARCH REFERENCES

A.L.R. — Preemption of state election laws by Help America Vote Act. 47 A.L.R. Fed 2d 81.

34-439. Disclosures in elections to authorize bonded indebtedness. — (1) Notwithstanding any other provision of law, any taxing district that proposes to submit any question to the electors of the district that would authorize any bonded indebtedness shall provide a brief official statement setting forth in simple, understandable language information on the proposal substantially as follows:

(a) The purpose for which the bonds are to be used including, but not necessarily limited to, a description of the facility and/or project that will be financed, in whole or in part, by the sale of the bonds; the date of the election; and the principal amount of the bonds to be issued;

(b) The anticipated interest rate on the proposed bonds based upon current market rates and a maximum interest rate if a maximum is specified in the question to be submitted to electors;

(c) The total amount to be repaid over the life of the bonds based on the anticipated interest. Such total shall reflect three (3) components: a total of the principal to be repaid; a total of the interest to be paid; and the sum of both;

(d) The length of time, reflected in months or years, in which the proposed bonds will be paid off or retired; and

(e) The total, existing indebtedness, including interest accrued, of the taxing district.

(2) The official statement shall be made a part of the ballot and shall be included in the official notice of the election.

History.

I.C., § 34-439, as added by 2012, ch. 200, § 2, p. 535.

STATUTORY NOTES

Prior Laws.

Former § 34-439, Disclosures in elections to authorize bonded indebtedness, which comprised I.C., § 34-440, as added by 1983, ch. 103, § 1, p. 222; am. 1984, ch. 107, § 1, p. 249; am. 1987, ch. 19, § 1, p. 26; am. and redesig. 2005, ch. 25, § 58, p. 82, was repealed by S.L. 2012, ch. 200, § 1, effective April 3, 2012.

Effective Dates.

Section 3 of S.L. 2012, ch. 200 declared an emergency. Approved April 3, 2012.

34-439A. Disclosures in elections to authorize levy. — (1) Notwithstanding any other provision of law except for the provisions of section 63-802(1)(g), Idaho Code, any taxing district that proposes to submit any question to the electors of the district that would authorize any levy shall provide a brief official statement setting forth in simple, understandable language information on the proposal substantially as follows:

(a) The purpose for which the levy shall be used; the date of the election; and, except for the provisions found in sections 63-802(1)(g) and 33-802(1) and (4), Idaho Code, the dollar amount estimated to be collected each year from the levy; and

(b) The length of time, reflected in months or years, in which the proposed levy will be assessed.

(2) The official statement shall be made a part of the ballot and shall be included in the official notice of the election.

History.
I.C., § 34-439A, as added by 2012, ch. 212, § 1, p. 580.

CHAPTER 5

POLITICAL PARTIES — ORGANIZATION

SECTION.
34-502. County central committee — Members — Officers — Duties of chairman — Notice to chairman.

34-502. County central committee — Members — Officers — Duties of chairman — Notice to chairman. — The county central committee of each political party in each county shall consist of the precinct committeemen representing the precincts within the county and the county chairman elected by the precinct committeemen. The precinct committeemen within each county shall meet at the county seat within ten (10) days after the primary election and at the time and date designated by the incumbent county chairman, and shall organize by electing a chairman, vice chairman, a secretary, a state committeeman, a state committeewoman, and such other officers as they may desire who shall hold office at the pleasure of the county central committee or until their successors are elected.

Unless state party rules, adopted as provided in section 34-505, Idaho Code, provide otherwise, when a vacancy exists in the office of county central committee chairman, it shall be the duty of the state central committee chairman to call a meeting of the precinct committeemen of the county, and the precinct committeemen shall proceed to elect a chairman of the county central committee for the balance of the unexpired term.

The county central committee shall fill by appointment all vacancies that occur or exist in the office of precinct committeeman who shall be a qualified elector of the precinct.

The county clerk shall deliver in writing to the chairman of the county central committee of each political party on or before January 20 of each year in which a general election is to be held, a list of the election precincts

in the county and the names and addresses of the precinct committeemen who were elected at the last primary election, or who have since been appointed as precinct committeemen, as such election or appointment is shown on the records of the county clerk. If the county clerk has no record of precinct committeemen, he shall in writing, so inform the chairman of the county central committee.

The chairman of the county central committee shall on or before February 1 of each year in which a general election is to be held, and at such other times as changes occur, certify to the county clerk the names and addresses of the precinct committeemen of his political party.

History.
1970, ch. 140, § 75, p. 351; am. 1975, ch. 21, § 2, p. 30; am. 1976, ch. 351, § 1, p. 1160; am. 2011, ch. 285, § 4, p. 778.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 285, deleted the former last sentence, which read: "Immediately upon receipt of certification, the county clerk shall deliver in writing to each precinct committeeman a notice of the provisions of subsection (1) of section 34-406, Idaho Code."

Effective Dates.
Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

CHAPTER 6

TIME OF ELECTIONS — OFFICERS ELECTED

SECTION.
34-601. Dates on which elections shall be held.
34-602. Publication of notices for primary, general or special elections — Contents.
34-622. Election of county coroners — Qualifications.
34-624. Election of precinct committeemen — Qualifications.

34-601. Dates on which elections shall be held. — Elections shall be held in this state on the following dates or times:

(1) A primary election shall be held on the third Tuesday in May, 2012, and every two (2) years thereafter on the above-mentioned Tuesday.

(2) A general election shall be held on the first Tuesday after the first Monday of November, 2012, and every two (2) years thereafter on the above-mentioned Tuesday.

(3) Special state elections shall be held on the dates ordered by the governor's proclamation, or as otherwise provided by law.

History.
1970, ch. 140, § 81, p. 351; am. 1971, ch. 193, § 1, p. 879; am. 1975, ch. 174, § 12, p. 469; am. 1979, ch. 309, § 2, p. 833; am. 2009, ch. 341, § 57, p. 993; am. 2012, ch. 33, § 2, p. 103.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, in subsections (1) and (4), substituted "third Tuesday in May, 2012" for "fourth Tuesday in May, 1980"; and, in subsection (2), substituted "November, 2012" for "November, 1972."

The 2012 amendment, by ch. 34, deleted former subsection (4), which read: "A presi-

dential primary shall be held in conjunction with the primary election, on the third Tuesday in May, 2012, and every four (4) years thereafter on the above-mentioned Tuesday."

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 15 of S.L. 2012, ch. 33 declared an emergency. Approved March 1, 2012.

34-602. Publication of notices for primary, general or special elections — Contents. — The several county clerks shall publish at least two (2) times, the notices for any primary, general or special election. The notice shall state the date of the election, the polling place in each precinct and the hours during which the polls shall be open for the purpose of voting, and information about the accessibility of the polling places.

The first notice shall be published at least twelve (12) days prior to any election and the second notice shall be published not later than five (5) days prior to the election. The notice of election shall be published in at least two (2) newspapers published within the county, but if this is not possible, the notice shall be published in one (1) newspaper published within the county or a newspaper which has general circulation within the county.

The second notice of election shall be accompanied by a facsimile, except as to size, of the sample ballot for the election.

History.
1970, ch. 140, § 82, p. 351; am. 2004, ch. 112, § 1, p. 385; am. 2009, ch. 341, § 58, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, added the last paragraph.

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

34-605. Election of United States congressional representatives — Qualifications.

RESEARCH REFERENCES

A.L.R. — Construction and application of vacancies in House of Representatives Clause of United States Constitution, U.S. Const. Art. I, § 2, cl. 4, and state provisions concerning such elections. 62 A.L.R.6th 143.

34-622. Election of county coroners — Qualifications. — (1) At the general election, 1986, and every four (4) years thereafter, a coroner shall be elected in every county.

(2) No person shall be elected to the office of coroner unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same

time pay a filing fee of forty dollars ($40.00) which shall be deposited in the county treasury.

(5) All newly elected or appointed county coroners shall attend a coroner's school within one (1) year of taking office. Such school shall be sponsored or endorsed by the Idaho state association of county coroners.

History.
1970, ch. 140, § 102, p. 351; am. 1994, ch. 54, § 5, p. 93; am. 1996, ch. 28, § 18, p. 67; am. 2010, ch. 355, § 2, p. 932.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 355, added subsection (5).

Effective Dates.
S.L. 2010, chapter 355 became law without the signature of the governor, effective July 1, 2010.

34-624. Election of precinct committeemen — Qualifications. — (1) At the primary election, 1980, and every two (2) years thereafter, a precinct committeeman for each political party shall be elected in every voting precinct within each county. The term of office of a precinct committeeman shall be from the eighth day following the primary election until the eighth day following the next succeeding primary election.

(2) No person shall be elected to the office of precinct committeeman unless he has attained the age of eighteen (18) years at the time of his election, is a citizen of the United States, a registered elector of and shall have resided within the voting precinct for a period of six (6) months next preceding his election.

(3) Each candidate shall file a declaration of candidacy with the county clerk.

(4) No filing fee shall be charged any candidate at the time of his filing his declaration of candidacy.

History.
1970, ch. 140, § 104, p. 351; am. 1971, ch. 29, § 1, p. 73; am. 1972, ch. 128, § 1, p. 256; am. 1975, ch. 174, § 16, p. 469; am. 1979, ch. 309, § 3, p. 833; am. 1996, ch. 28, § 20, p. 67; am. 2011, ch. 285, § 5, p. 778.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 285, inserted "a registered elector of" in subsection (2).

Effective Dates.
Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

CHAPTER 7

NOMINATIONS — CONVENTIONS — PRIMARY ELECTIONS

SECTION.
34-702A. Declaration of intent for write-in candidates.
34-704. Declaration of candidacy.
34-708A. Independent candidates for president and vice-president.
34-713. Preparation of primary ballots.

SECTION.
34-717. Withdrawal of candidacy.

PRESIDENTIAL PREFERENCE PRIMARY

34-731. Presidential preference vote. [Repealed.]
34-732. Selection of candidates for nomination in presidential primary. [Repealed.]
34-733. Notification to candidates — No affidavit of candidacy required. [Repealed.]
34-734. Voting in presidential primary. [Repealed.]
34-735. Candidate's list of proposed delegates to national convention. [Repealed.]
34-736. Delegates to national convention. [Repealed.]
34-737. Uncommitted delegates. [Repealed.]
34-738. Conduct of election. [Repealed.]
34-739. Costs of presidential preference primary notice and ballots. [Repealed.]

34-701. Declarations of candidacy and petitions — Form prescribed by secretary of state — Filing fees.

RESEARCH REFERENCES

A.L.R. — Effect of irregularities or defects in primary petitions — State cases. 14 A.L.R.6th 543.

Construction and application of statutes and ordinances concerning establishment of residency, as condition for running for municipal office. 74 A.L.R.6th 209.

34-702. Requirements for write-in candidates at primary.

RESEARCH REFERENCES

A.L.R. — Challenges to write-in ballots and certification of write-in candidates. 75 A.L.R.6th 311.

34-702A. Declaration of intent for write-in candidates. — No write-in vote for any office in a primary, special, or general election shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of said office if elected. The declaration of intent shall be filed with the secretary of state if for a federal, state, or legislative district office and with the county clerk if for a county office. Such declaration of intent shall be filed not later than twenty-eight (28) days before the day of election. The secretary of state shall prescribe the form for said declaration.

In those counties which utilize optical scan ballots an elector shall not place on the ballot a sticker bearing the name of a person, or use any other method or device, except writing, to vote for a person whose name is not printed on the ballot.

History.

I.C., § 34-702A, as added by 1983, ch. 213, § 5, p. 590; am. 1992, ch. 176, § 3, p. 553; am. 1993, ch. 313, § 4, p. 1157; am. 1999, ch. 221, § 1, p. 588; am. 2001, ch. 272, § 1, p. 993; am. 2010, ch. 162, § 1, p. 335.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 162, substituted "twenty-eight (28) days" for "fourteen (14) days" near the end of the first paragraph.

Effective Dates.
Section 2 of S.L. 2010, ch. 162 declared an emergency. Approved March 31, 2010.

34-704. Declaration of candidacy. — Any person legally qualified to hold such office is entitled to become a candidate and file his declaration of candidacy. Each political party candidate for precinct, state, district or county office shall file his declaration of candidacy in the proper office between 8 a.m., on the twelfth Monday preceding the primary election and 5 p.m., on the tenth Friday preceding the primary election. All political party candidates shall declare their party affiliation in their declaration of candidacy and shall be affiliated with a party at the time of filing. A candidate shall be deemed affiliated with the political party if the candidate submits a party affiliation form along with the declaration of candidacy to the filing official. The filing official shall reject any declaration of candidacy for partisan office in a primary election from candidates who are not affiliated with a political party. Candidates for nonpartisan office shall file during the period provided for in this section.

Candidates who file a declaration of candidacy under a party name and are not nominated at the primary election shall not be allowed to appear on the general election ballot under any other political party name, nor as an independent candidate.

Independent candidates shall file their declaration of candidacy in the manner provided in section 34-708, Idaho Code.

History.
I.C., § 34-704, as added by 1971, ch. 5, § 3, p. 11; am. 1971, ch. 188, § 1, p. 867; am. 1972, ch. 46, § 4, p. 84; am. 1972, ch. 346, § 1, p. 1015; am. 1975, ch. 174, § 17, p. 469; am. 1976, ch. 60, § 3, p. 200; am. 1979, ch. 309, § 4, p. 833; am. 1983, ch. 213, § 6, p. 590; am. 1984, ch. 8, § 1, p. 12; am. 1984, ch. 173, § 3, p. 414; am. 1989, ch. 70, § 1, p. 111; am. 2003, ch. 48, § 10, p. 181; am. 2012, ch. 211, § 5, p. 571.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 211, substituted "and shall be affiliated with a party at the time of filing" for "except candidates for nonpartisan office" at the end of the third sentence and added the last three sentences in the last paragraph.

Effective Dates.
Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

34-708A. Independent candidates for president and vice-president. — Persons who desire to be independent candidates for the offices of president and vice-president, must file, prior to August 25 of the election year, declarations of candidacy as independent candidates. Such declarations must state that such persons are offering themselves as independent candidates and must declare that they have no political party affiliation. The declarations shall have attached thereto a petition signed by one thousand (1,000) qualified electors.

The candidates for president and vice-president shall be considered as

candidates for one (1) office, and only one (1) such petition need be filed for both offices.

Signatures on the petitions required in this section shall be verified in the manner prescribed in section 34-1807, Idaho Code, provided that the petition circulators are not required to be Idaho residents.

History.

I.C., § 34-708A, as added by 1977, ch. 14, § 1, p. 30; am. 1979, ch. 309, § 6, p. 833; am. 1985, ch. 42, § 3, p. 87; am. 1987, ch. 262, § 2, p. 553; am. 1996, ch. 28, § 25, p. 67; am. 2011, ch. 285, § 6, p. 778.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 285, substituted "one thousand (1,000) qualified electors" for "a number of qualified electors not less than one percent (1%) of the number of votes cast in this state for presidential electors at the previous general election at which a president of the United States was elected" in the first paragraph and added "provided that the petition circulators are not required to be Idaho residents" at the end of the last paragraph.

Effective Dates.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

34-713. Preparation of primary ballots. — Upon receipt of the sample ballot and instructions from the secretary of state, each county clerk shall print and prepare the official primary ballots for the forthcoming election. The printing of the ballots shall be a county expense and paid out of the county treasury.

Each county clerk shall cause to be published on the earliest date possible in May the names of all the political party candidates who shall appear on the primary ballot. The names shall be listed alphabetically under each particular office title.

History.

1970, ch. 140, § 117, p. 351; am. 1975, ch. 174, § 13, p. 469; am. 1976, ch. 60, § 9, p. 200; am. 1979, ch. 309, § 7, p. 833; am. 2012, ch. 33, § 3, p. 103.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 34, deleted "except presidential preference primary ballots which shall be paid for as provided in section 34-739, Idaho Code" from the end of the second sentence in the first paragraph and deleted "and the names of all political party candidates who shall appear on the presidential preference primary ballot" from the end of the first sentence in the second paragraph.

Effective Dates.

Section 15 of S.L. 2012, ch. 33 declared an emergency. Approved March 1, 2012.

34-717. Withdrawal of candidacy. — A candidate for nomination or candidate for election to a partisan office may withdraw from the election by filing a notarized statement of withdrawal with the officer with whom his declaration of candidacy was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. The filing officer shall immediately notify the proper central committee of the party, if any, of the individual withdrawing. A candidate may not withdraw later than forty-five (45) days before an election, except

in the case of a general election when the deadline shall be no later than September 7. Filing fees paid by the candidate shall not be refunded.

Any candidate who has filed a statement of withdrawal pursuant to this section shall not be allowed to be appointed to fill a vacancy unless such vacancy occurs because of the death of a previous candidate.

History.
I.C., § 34-717, as added by 1983, ch. 213, § 8, p. 590; am. 1999, ch. 222, § 3, p. 588; am. 2011, ch. 11, § 12, p. 24.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 11, substituted "election to a partisan office" for "election to an office" in the first sentence in the first paragraph

Effective Dates.
Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

PRESIDENTIAL PREFERENCE PRIMARY

34-731. Presidential preference vote. [Repealed.]

Repealed by S.L. 2012, ch. 33, § 4, effective March 1, 2012.

History.
1975, ch. 174, § 1, p. 469; am. 1979, ch. 309, § 8, p. 833; am. 2010, ch. 185, § 7, p. 382.

34-732. Selection of candidates for nomination in presidential primary. [Repealed.]

Repealed by S.L. 2012, ch. 33, § 5, effective March 1, 2012.

History.
1975, ch. 174, § 2, p. 469; am. 2007, ch. 202, § 2, p. 620; am. 2010, ch. 185, § 8, p. 382; am. 2011, ch. 285, § 7, p. 778.

34-733. Notification to candidates — No affidavit of candidacy required. [Repealed.]

Repealed by S.L. 2012, ch. 33, § 6, effective March 1, 2012.

History.
1975, ch. 174, § 3, p. 469; am. 1983, ch. 213, § 9, p. 590.

34-734. Voting in presidential primary. [Repealed.]

Repealed by S.L. 2012, ch. 33, § 7, effective March 1, 2012.

History.
1975, ch. 174, § 4, p. 469.

34-735. Candidate's list of proposed delegates to national convention. [Repealed.]

Repealed by S.L. 2012, ch. 33, § 8, effective March 1, 2012.

History.
1975, ch. 174, § 5, p. 469.

34-736. Delegates to national convention. [Repealed.]

Repealed by S.L. 2012, ch. 33, § 9, effective March 1, 2012.

History.
1975, ch. 174, § 6, p. 469.

34-737. Uncommitted delegates. [Repealed.]

Repealed by S.L. 2012, ch. 33, § 10, effective March 1, 2012.

History.
1975, ch. 174, § 7, p. 469.

34-738. Conduct of election. [Repealed.]

Repealed by S.L. 2012, ch. 33, § 11, effective March 1, 2012.

History.
1975, ch. 174, § 8, p. 469.

34-739. Costs of presidential preference primary notice and ballots. [Repealed.]

Repealed by S.L. 2012, ch. 33, § 12, effective March 1, 2012.

History.
1975, ch. 174, § 9, p. 469; am. 1979, ch. 309, § 9, p. 833.

CHAPTER 9

BALLOTS

SECTION.
34-901. Official election ballot identification.
34-902. County commissioners to provide sufficient ballots and ballot boxes for each polling place at all elections.
34-903. Secretary of state to prescribe form and contents of all ballots and related documents.
34-904. Primary election ballots.
34-904A. Eligibility to vote in primary elections.
34-908. Each ballot to carry official election ballot identification on outside — Marking of ballot by voter.
34-910. Duty of county clerk to furnish sufficient ballots to each voting precinct — Record of number of ballots printed and furnished.

34-901. Official election ballot identification. — (1) The county clerk shall provide that all election ballots are identified as official. Each ballot shall have upon its face the date and year of the election in which it is used and the words "Official Election Ballot."

(2) The clerk in a county that utilizes optical scan ballots shall ensure that:

(a) The official election ballot identification is printed on each ballot issued; and

(b) Each ballot contains a unique marking to prevent duplication of official election ballots.

(3) The clerk in a county that utilizes paper or other ballots shall provide an official election stamp of such character or device and of such material as the board of county commissioners may select. In the event such stamp is lost, destroyed or unavailable upon election day, the distributing clerk shall initial each ballot and write "stamped" upon the ballot in the appropriate place.

History.
1970, ch. 140, § 121, p. 351; am. 2013, ch. 285, § 2, p. 735.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 285, substituted "ballot identification" for "stamp" in the section heading and rewrote the section, which formerly read: "The county clerk shall provide for an official election stamp of such character or device, and of such material as the board of county commissioners may select. Each stamp shall have upon its face the date and year of the election in which it is used and the words 'Official Election Ballot.' In the event such stamp is lost, destroyed or unavailable upon election day, the distributing clerk shall initial each ballot and write 'stamped' upon the ballot in the appropriate place."

34-902. County commissioners to provide sufficient ballots and ballot boxes for each polling place at all elections. — The board of county commissioners shall authorize that a suitable number of ballots be printed for each polling place. The county clerk shall cause such ballots to be printed upon receiving final instructions from the secretary of state, and the cost shall be paid from the county treasury. The board of county commissioners shall authorize the printing of ballots in the same manner for special elections when such special election is ordered by the governor or provided by law.

The board of county commissioners shall also provide a suitable number of ballot boxes for each polling place within the county, and shall have complete authority to determine the specifications for such ballot boxes.

History.
1970, ch. 140, § 122, p. 351; am. 1975, ch. 174, § 14, p. 469; am. 1979, ch. 309, § 10, p. 833; am. 2011, ch. 11, § 13, p. 24.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 11, deleted "At its regular meeting in March" from the beginning of the first sentence in the first paragraph.

Effective Dates.
Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

34-903. Secretary of state to prescribe form and contents of all ballots and related documents. — (1) The secretary of state shall, in a manner consistent with the election laws of this state, prescribe the form for

all ballots, absentee ballots, diagrams, sample ballots, ballot labels, voting machine labels or booklets, certificates, notices, declarations of candidacy, affidavits of all types, lists, applications, poll books, tally sheets, registers, rosters, statements and abstracts if required by the election laws of this state.

(2) The secretary of state shall prescribe the arrangement of the matter to be printed on each kind of ballot and label, including:

(a) The placement and listing of all offices, candidates and issues upon which voting is statewide, which shall be uniform throughout the state.

(b) The listing of all other candidates required to file with him, and the order of listing all offices and issues upon which voting is not statewide.

(3) The names of candidates for legislative or special district offices shall be printed only on the ballots and ballot labels furnished to voters of such district.

(4) The names of candidates which appear on election ballots for federal, state, county and city offices shall be rotated in the manner determined by the secretary of state. The order of candidates for office in other elections shall be determined by applying the first letter of each candidate's last name to a random alphabet selected prior to each election by the secretary of state.

(5) No candidate's name may appear on a ballot for more than one (1) partisan office, except that a candidate for precinct committeeman may seek one (1) additional office upon the same ballot. The provisions of this subsection shall not apply to the election of electors of president and vice-president of the United States.

History.

1970, ch. 140, § 123, p. 351; am. 1971, ch. 189, § 1, p. 870; am. 1987, ch. 313, § 1, p. 656; am. 2011, ch. 285, § 8, p. 778; am. 2012, ch. 211, § 6, p. 571.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 285, in subsection (4), substituted "The names of candidates which appear on election ballots for federal, state, county and city offices" for "The names of all candidates which appear on any election ballot" and added the last sentence.

The 2012 amendment, by ch. 211, inserted "partisan" preceding "office" in the first sentence in subsection (5).

Effective Dates.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state statutory requirements concerning placement of independent candidate for President of the United States on ballot. 33 A.L.R.6th 513.

34-903A. Name on ballot.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state requirements for placement of independent candidates for United States senate on ballot. 59 A.L.R.6th 111.

34-904. Primary election ballots. — (1) There shall be a separate primary election ballot for each political party upon which its ticket shall be printed; however, a county may use a separate ballot for the office of precinct committeeman. All candidates who have filed their declarations of candidacy and are subsequently certified shall be listed under the proper office titles on their political party ticket. The secretary of state shall design the primary election ballot to allow for write-in candidates under each office title.

(2) The office titles shall be listed in order beginning with the highest federal office and ending with precinct offices. The secretary of state has the discretion and authority to arrange the classifications of offices as provided by law.

(3) It is not necessary to print a primary ballot for a political party which does not have candidates for more than half of the federal or statewide offices on the ballot if no more than one (1) candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify to the county clerk the names of candidates for that party for the general election ballot only.

History.

1970, ch. 140, § 124, p. 351; am. 1971, ch. 189, § 2, p. 870; am. S.L. 1972, ch. 130, § 1, p. 259; am. 1983, ch. 213, § 10, p. 590; am. 2001, ch. 272, § 2, p. 993; am. 2011, ch. 319, § 7, p. 929; am. 2012, ch. 57, § 1, p. 157.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 319, added the subsection designations and, in subsection (1), substituted "There shall be a single primary election ballot on which the complete ticket of each political party shall be printed;" for "There shall be a single primary election ballot on which the complete ticket of each political party shall be printed" and deleted the former second sentence, which read "Each political ticket shall be separated from the others by a perforated line that will enable the elector to detach the ticket of the political party voted from those remaining."

The 2012 amendment, by ch. 57, deleted "only" preceding "its ticket" in the first sentence of subsection (1).

Legislative Intent.

Section 1 of S.L. 2011, ch. 319 provided: "Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party's candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections."

Effective Dates.

Section 2 of S.L. 2012, ch. 57 declared an emergency. Approved March 13, 2012.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Open primary.

Constitutionality.

This section was declared unconstitutional as applied to the Idaho Republican Party because the state's use of an open primary system to determine nominees for the general election violated the Republican Party's First Amendment right to freedom of association by permitting substantial numbers of non-party members to cross over and participate in the Republican Party's selection of its nominees. Idaho Republican Party v. Ysursa, 765 F. Supp. 2d 1266 (D. Idaho 2011).

Open Primary.

Neither the Republican party nor the Idaho secretary of state were entitled to summary judgment as to whether Idaho's open primary election statutes, § 34-411(1) and this section, violated the party's First Amendment right to freedom of association because fact issues remained as to the effect of "cross over" voting on the party's message and its selection of candidates for office. Idaho Republican Party v. Ysursa, 660 F. Supp. 2d 1195 (D. Idaho 2009).

RESEARCH REFERENCES

A.L.R. — Challenges to write-in ballots and certification of write-in candidates. 75 A.L.R.6th 311.

34-904A. Eligibility to vote in primary elections. — (1) Except as provided in subsection (2) of this section, an elector who has designated a party affiliation shall be allowed to vote only in the primary election of the political party for which such an elector is so registered.

(2) A political party qualified to participate in elections pursuant to section 34-501, Idaho Code, may, no later than one hundred eighty (180) days prior to a primary election, notify the secretary of state in writing that the political party elects to allow, in addition to those electors who have registered with that political party, any of the following to vote in such party's primary election:

(a) Electors designated as "unaffiliated";

(b) Electors registered with a different political party qualified to participate in elections pursuant to section 34-501, Idaho Code. In the event a state chairman of a political party elects to allow electors to vote in that party's primary election pursuant to this paragraph (b), the state chairman shall identify which political parties' registrants are allowed to vote in such primary election.

(3) In the event that more than one (1) political party allows "unaffiliated" electors to vote in their party's primary election, an "unaffiliated" elector shall designate which political party's primary election the elector chooses to vote in by declaring such designation to the poll worker or other appropriate election personnel, who shall then record in the poll book the elector's choice. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.

(4) In the event no more than one (1) political party allows "unaffiliated" electors to vote in their party's primary election, an "unaffiliated" elector may designate that political party's primary election as the election the

elector chooses to vote in by declaring such designation to the poll worker or other appropriate election personnel, who shall then record in the poll book the elector's choice. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.

(5) An "unaffiliated" elector having declared such designation as provided for in subsection (3) or (4) of this section shall not be permitted to vote in the primary election of any other party held on that primary election date.

(6) If an "unaffiliated" elector does not declare a choice of political party's primary election ballot, the elector shall not be permitted to vote in any political party's primary election but shall receive a nonpartisan ballot.

(7) In the event that one (1) or more political parties allow electors affiliated with a different political party to vote in their primary election pursuant to this section, an elector affiliated with a different political party shall declare to the poll worker or other appropriate election personnel in which primary election ballot such elector wishes to vote. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.

Provided that all other provisions of this act are complied with, nothing in this section shall be construed to prohibit an elector designated as "unaffiliated" from voting in the primary election of a different party held in subsequent years. Notwithstanding any other provision of this act, if a political party allows "unaffiliated" electors to vote in that political party's primary election pursuant to this section, a vote by an "unaffiliated" elector in such primary election shall not change or affect the elector's "unaffiliated" designation.

History.
I.C., § 34-904A, as added by 2011, ch. 319, § 8, p. 929.

STATUTORY NOTES

Legislative Intent.
Section 1 of S.L. 2011, ch. 319 provided: "Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party's candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections."

34-906. Ballots for general elections.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state statutory requirements concerning placement of independent candidate for President of the United States on ballot. 33 A.L.R.6th 513.

Validity, construction, and application of state requirements for placement of independent candidates for United States senate on ballot. 59 A.L.R.6th 111.

Challenges to write-in ballots and certification of write-in candidates. 75 A.L.R.6th 311.

34-908. Each ballot to carry official election ballot identification on outside — Marking of ballot by voter. — (1) Every ballot used at any primary, general or special election shall be marked on the outside with the official election ballot identification before it is given to the voter. At this time the election official distributing the ballots shall give the voter instructions in regard to folding the ballot after he has voted.

(2) The voter shall mark his ballot with a cross (X) or other mark sufficient to show his intent in the place provided after the name of the candidate for whom he intends to vote for each office.

(3) If a person votes by writing the name of a candidate on the ballot, such act shall constitute a vote for the person's name who appears without the necessity of placing a mark after the name written on the ballot, unless such a mark is required by a vote tally system.

History.
1970, ch. 140, § 128, p. 351; am. 1988, ch. 293, § 1, p. 932; am. 2013, ch. 285, § 3, p. 735.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 285, substituted "ballot identification" for "stamp" in the section heading; added the subsection designations; and in subsection (1), substituted "marked" for "stamped" and "ballot identification" for "stamp" in the first sentence.

34-910. Duty of county clerk to furnish sufficient ballots to each voting precinct — Record of number of ballots printed and furnished. — (1) It shall be the duty of the county clerk to furnish and cause to be delivered a sufficient number of election ballots to the judges of elections of each voting precinct. The ballots shall be delivered to the polling place within the precinct on or before the opening of the polls for the election together with the official election ballot identification in sealed packages. Upon receipt of the ballots and supplies, the chief judge of elections or other designated judge must return a written receipt to the county clerk.

(2) The county clerk shall keep a record of the number of ballots printed and furnished to each polling place within the county and preserve the same for one (1) year.

History.
1970, ch. 140, § 129, p. 351; am. 2011, ch. 285, § 9, p. 778; am. 2013, ch. 285, § 4, p. 735.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 285, in the last sentence of the first paragraph, substituted "receipt" for "delivery" and inserted "or other designated judge."

The 2013 amendment, by ch. 285, added the subsection designations and substituted "election ballot identification" for "stamp and ink pad" in the second sentence in subsection (1).

Effective Dates.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

CHAPTER 10

ABSENTEE VOTING

SECTION.
34-1002. Application for absentee ballot.
34-1003. Issuance of absentee ballot.
34-1005. Return of absentee ballot.
SECTION.
34-1012. Alternative procedures for absentee voting — Early voting.
34-1013. Early voting ballot security.

34-1001. Voting by absentee ballot authorized.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of early voting statutes. 29 A.L.R.6th 343.

34-1002. Application for absentee ballot. — (1) Any registered elector may make written application to the county clerk, or other proper officer charged by law with the duty of issuing official ballots for such election, for an official ballot or ballots of the kind or kinds to be voted at the election. The application shall contain the name of the elector, the elector's home address, county, and address to which such ballot shall be forwarded.

(2) In order to provide the appropriate primary election ballot to electors, in the event a political party elects to allow unaffiliated electors to vote in that party's primary election pursuant to section 34-904A, Idaho Code, the elector shall designate, as part of the written application for a ballot for primary elections, the elector's party affiliation or designation as "unaffiliated." The application shall contain checkoff boxes for "unaffiliated" electors by which such electors shall indicate for which party's primary ballot the "unaffiliated" elector chooses to vote. Provided however, that no political party's primary election ballot shall be provided to an "unaffiliated" elector for a political party that has not elected to allow "unaffiliated" electors to vote in that political party's primary election pursuant to section 34-904A, Idaho Code. If an "unaffiliated" elector does not indicate a choice of political party's primary election ballot, the elector shall receive a nonpartisan ballot.

(3) In order to provide the appropriate primary election ballot to electors, in the event one (1) or more political parties elect to allow electors affiliated with a different political party to vote in that party's primary election, the application shall contain checkoff boxes by which such electors may indicate the primary ballot in which the elector wishes to vote.

(4) For electors who are registered to vote as of January 1, 2012, and who remain registered electors, the elector shall designate, as part of the written

application for a ballot for the 2012 primary elections, the elector's party affiliation or designation as "unaffiliated." The application shall contain checkoff boxes for "unaffiliated" electors by which such electors shall indicate for which party's primary election ballot the "unaffiliated" elector chooses to vote, pursuant to section 34-904A, Idaho Code. Provided however, that no political party's primary election ballot shall be provided to an "unaffiliated" elector for a political party that has not elected to allow "unaffiliated" electors to vote in the party's primary election pursuant to section 34-904A, Idaho Code. If an "unaffiliated" elector does not indicate a choice of political party's primary election ballot, the elector shall receive a nonpartisan ballot. After the 2012 primary election, the county clerk shall record the party affiliation or "unaffiliated" designation so selected on the application for an absentee ballot as part of such an elector's record within the voter registration system as provided for in section 34-437A, Idaho Code.

(5) After the 2012 primary election, electors who remain registered voters and who did not vote in the 2012 primary elections and who make written application for an absentee ballot shall be designated as "unaffiliated" electors as provided in section 34-404, Idaho Code, and such electors shall be given the appropriate ballot for such "unaffiliated" designation pursuant to the provisions of this act.

(6) An elector may not change party affiliation or designation as "unaffiliated" on an application for absentee ballot. For primary elections, an elector may change party affiliation or designation as "unaffiliated" as provided for in section 34-411A, Idaho Code.

(7) The application for an absent elector's ballot shall be signed personally by the applicant. The application for a mail-in absentee ballot shall be received by the county clerk not later than 5:00 p.m. on the sixth day before the election. An application for in person absentee voting at the absent elector's polling place described in section 34-1006, Idaho Code, shall be received by the county clerk not later than 5:00 p.m. on the Friday before the election. Application for an absentee ballot may be made by using a facsimile machine or other electronic transmission. In the event a registered elector is unable to vote in person at the elector's designated polling place on the day of election because of an emergency situation which rendered the elector physically unable, the elector may nevertheless apply for an absent elector's ballot by notifying the county clerk within ninety-six (96) hours prior to the closing of the polls. No person may, however, be entitled to vote under an emergency situation unless the situation claimed rendered the elector physically unable to vote at the elector's designated polling place within ninety-six (96) hours prior to the closing of the polls.

(8) A person may make application for an absent elector's ballot by use of a properly executed federal post card application as provided for in the laws of the United States known as uniformed and overseas citizens absentee voting act (UOCAVA, 42 U.S.C. 1973 ff, et seq., as amended). The issuing officer shall keep as a part of the records of such officer's office a list of all applications so received and of the manner and time of delivery or mailing to and receipt of returned ballot.

(9) The county clerk shall, not later than seventy-five (75) days after the date of each general election, submit a report to the secretary of state

containing information concerning absentee voters as required by federal law.

History.

1970, ch. 140, § 163, p. 351; am. 1972, ch. 157, § 1, p. 349; am. 1973, ch. 304, § 7, p. 646; am. 1976, ch. 353, § 2, p. 1166; am. 1987, ch. 167, § 1, p. 327; am. 1994, ch. 122, § 2, p. 271; am. 1995, ch. 215, § 12, p. 747; am. 2002, ch. 236, § 1, p. 707; am. 2003, ch. 48, § 11, p. 181; am. 2010, ch. 332, § 1, p. 881; am. 2011, ch. 319, § 9, p. 929; am. 2013, ch. 135, § 4, p. 307.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 332, in the second paragraph, in the third sentence, substituted "on the Friday before the election" for "on the day before the election," in the fourth sentence, added "or other electronic transmission," and in the last sentence, substituted "ninety-six (96) hours" for "forty-eight (48) hours"; and deleted the second sentence in the third paragraph, which formerly read: "A properly executed federal postcard application (F.P.C.A.), shall be considered as a request for an absent elector's ballot through the next two (2) regularly scheduled general elections for federal office following receipt of the application."

The 2011 amendment, by ch. 319, added "— Primary elections" to the section heading, added subsections (2) through (6), added the subsection designations, and made gender neutral changes.

The 2013 amendment, by ch. 135, deleted "Primary elections" at the end of the section heading; substituted "by notifying the county clerk within ninety-six (96) hours prior to the closing of the polls" for "on the day of election by notifying the county clerk" at the end of the fifth sentence in subsection (7); and inserted "as amended" at the end of the fifth sentence in subsection (8).

Legislative Intent.

Section 1 of S.L. 2011, ch. 319 provided: "Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party's candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections."

Effective Dates.

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

JUDICIAL DECISIONS

Federal Law.

Prior to January 1, 2011, former § 50-443 made the provisions of the Federal Voting Assistance Act of 1955 effective for absentee balloting in municipal elections, even though that act had been repealed in 1986. Brannon v. City of Coeur d'Alene, — Idaho —, 292 P.3d 234 (2012).

34-1003. Issuance of absentee ballot. — (1) Upon receipt of an application for an absent elector's ballot within the proper time, the county clerk receiving it shall examine the records of the county clerk's office to ascertain whether or not such applicant is registered and lawfully entitled to vote as requested and, if found to be so, the elector shall arrange for the applicant to vote by absent elector's ballot.

(2) In the case of requests for primary ballots:

(a) Except as provided in subsection (2)(b) of this section, an elector who has designated a political party affiliation shall receive a primary ballot for that political party.

(b) An elector who has designated a political party affiliation pursuant to section 34-404, Idaho Code, may receive the primary election ballot of a political party other than the political party such elector is affiliated with if such other political party has provided notification to the secretary of state that identifies the political party such elector is affiliated with, as provided for in section 34-904A(2)(b), Idaho Code.

(c) An "unaffiliated" elector shall receive the primary ballot for the political party which the elector designated in the elector's application for an absentee ballot pursuant to section 34-1002, Idaho Code. Provided however, that a political party's ballot shall not be provided to an "unaffiliated" elector where that political party has not elected to allow "unaffiliated" electors to vote in such party's primary election pursuant to section 34-904A, Idaho Code.

(d) If an "unaffiliated" elector does not indicate a choice of political party's primary ballot, the elector shall receive a nonpartisan ballot.

(3) The absentee ballot may be delivered to the absent elector in the office of the county clerk, by postage prepaid mail or by other appropriate means, including use of a facsimile machine or other electronic transmission. Validly requested absentee ballots for candidates for federal office, where the request is received at least forty-five (45) days before an election, shall be sent not later than forty-five (45) days before that election to all electors who are entitled to vote by absentee ballot.

(4) Pursuant to the uniformed and overseas citizens absentee voting act (UOCAVA, 42 U.S.C. 1973 ff, et seq., as amended) the secretary of state shall establish procedures for the transmission of blank absentee ballots by mail and by electronic transmission for all electors who are entitled to vote by absentee ballot under the uniformed and overseas citizens absentee voting act, and by which such electors may designate whether the elector prefers the transmission of such ballots by mail or electronically. If no preference is stated, the ballots shall be transmitted by mail. The secretary of state shall establish procedures for transmitting such ballots in a manner that shall protect the security and integrity of such ballots and the privacy of the elector throughout the process of transmission.

(5) A political party may supply a witness to accompany the clerk in the personal delivery of an absentee ballot. If the political party desires to supply a witness it shall be the duty of the political party to supply the names of such witnesses to the clerk no later than forty-five (45) days prior to the election. The clerk shall notify such witnesses of the date and approximate hour the clerk or deputy clerk intends to deliver the ballot.

(6) A candidate for public office or a spouse of a candidate for public office shall not be a witness in the personal delivery of absentee ballots.

(7) An elector physically unable to mark such elector's own ballot may receive assistance in marking such ballot from the officer delivering same or an available person of the elector's own choosing. In the event the election officer is requested to render assistance in marking an absent elector's ballot, the officer shall ascertain the desires of the elector and shall vote the applicant's ballot accordingly. When such ballot is marked by an election officer, the witnesses on hand shall be allowed to observe such marking. No

county clerk, deputy, or other person assisting a disabled voter shall attempt to influence the vote of such elector in any manner.

History.

1970, ch. 140, § 164, p. 351; am. 1973, ch. 304, § 9, p. 646; am. 1975, ch. 66, § 1, p. 132; am. 1984, ch. 131, § 6, p. 305; am. 1993, ch. 100, § 1, p. 253; am. 1994, ch. 122, § 4, p. 271; am. 1996, ch. 74, § 1, p. 238; am. 2010, ch. 332, § 2, p. 881; am. 2011, ch. 11, § 14, p. 24; am. 2011, ch. 319, § 10, p. 929.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 332, in the first paragraph, added "or other electronic transmission" in the second sentence and added the last sentence; and added the second paragraph.

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 11, inserted "for candidates for federal office" in the last sentence in the first paragraph.

The 2011 amendment, by ch. 319, added subsection (2), added the subsection designations, and made gender neutral changes.

Legislative Intent.

Section 1 of S.L. 2011, ch. 319 provided: "Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party's candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections."

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Section 11 of S.L. 2011, ch. 319 provided: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

34-1005. Return of absentee ballot. — The return envelope shall be mailed or delivered to the officer who issued the same; provided, that an absentee ballot must be received by the issuing officer by 8:00 p.m. on the day of election before such ballot may be counted.

Upon receipt of an absent elector's ballot the county clerk of the county wherein such elector resides shall verify the authenticity of the affidavit and shall write or stamp upon the envelope containing the same, the date and hour such envelope was received in his office and record the information pursuant to section 34-1011, Idaho Code. He shall safely keep and preserve all absent electors' ballots unopened until the time prescribed for delivery to the polls or to the central count ballot processing center.

History.

1970, ch. 140, § 166, p. 351; am. 1972, ch. 157, § 2, p. 349; am. 1995, ch. 215, § 13, p. 747; am. 2007, ch. 202, § 4, p. 620; am. 2011, ch. 285, § 10, p. 778.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 285, in the second paragraph, added "and record the information pursuant to section 34-1011, Idaho Code" at the end of the first sentence and substituted "polls or to the central count ballot processing center" for "judges in accordance with this act" at the end of the last sentence.

Effective Dates.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

RESEARCH REFERENCES

A.L.R. — Challenges to write-in ballots and certification of write-in candidates. 75 A.L.R.6th 311.

34-1012. Alternative procedures for absentee voting — Early voting. — Those counties that utilize absentee voting facilities that have access to the Idaho statewide voter registration system and count ballots at a central location may elect to conduct "early voting" according to the provisions of this section. For those counties that elect to do "early voting," early voting shall begin on or before the third Monday before the election and end at 5:00 p.m. on the Friday before the election. Primary election ballots shall be issued pursuant to section 34-1002(2), Idaho Code.

(1) A voter who appears at an "early voting" station to vote shall state his or her name and address to the election official and present the voter's identification as required by sections 34-1113 and 34-1114, Idaho Code.

(2) The election official shall examine the records to ascertain whether or not such applicant is registered and lawfully entitled to vote as requested. The provisions of section 34-408A, Idaho Code, authorizing election day registration shall also apply in determining the applicant's qualifications to vote.

(3) Before receiving a ballot, each elector shall sign his or her name in the election register and poll book provided for early voting.

(4) The elector shall then be given the appropriate ballots that have been stamped with the official election stamp and shall be given folding instructions for such ballots, if appropriate.

(5) Upon receipt of the ballots, the elector shall retire to a vacant voting booth and mark the ballots according to the instructions provided.

(6) After marking the ballot, the elector shall present himself or herself to the election official at the ballot box and state his or her name and address. The elector shall then deposit the ballot in the ballot box or hand it to the election official, who shall deposit it. The election official shall then record that the elector has voted and proclaim the same in an audible voice.

(7) Voters requiring assistance shall be provided with such assistance in accordance with section 34-1108, Idaho Code.

(8) Electioneering is prohibited at an early voting polling place as provided in section 18-2318, Idaho Code.

History.

I.C., § 34-1012, as added by 2013, ch. 132, § 1, p. 302.

34-1013. Early voting ballot security. — A detailed plan for the security of ballots for early voting shall be submitted to the secretary of state for approval no later than thirty (30) days before early voting begins. At a minimum, the following procedures must be followed:

(1) The ballot boxes used for casting early ballots shall remain locked and secured with a numbered seal until the time of tabulation on election day.

(2) A record shall be maintained consisting of the number of ballots issued by date and seal number of each ballot box used for early voting.

(3) Arrangements shall be made to have a deputy sheriff, police officer or bonded private security firm secure the location.

(4) The actual counting of ballots shall not begin until election day, and the results shall not be released to the public until all voting places in the state have closed.

History.
I.C., § 34-1013, as added by 2013, ch. 132, § 2, p. 302.

CHAPTER 11

CONDUCT OF ELECTIONS

SECTION.
34-1103. Opening ballot boxes.
34-1106. Signing combination election record and poll book — Delivery of ballot to elector.
34-1108. Assistance to voter.
34-1113. Identification at the polls.
34-1114. Affidavit in lieu of personal identification.

34-1103. Opening ballot boxes. — (1) In the presence of bystanders the judges of elections shall break the sealed packages of election ballots and other supplies.

(2) Before receiving any ballots the judges shall open and exhibit, close and lock the ballot boxes, and thereafter they shall not be removed from the polling place until all ballots are counted. They shall not be opened until the polls are closed unless the precinct is using a duplicate set of ballot boxes.

History.
1970, ch. 140, § 175, p. 351; am. 2013, ch. 285, § 5, p. 735.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 285, added the subsection designations and deleted "official stamp" following "election ballots" in subsection (1).

34-1106. Signing combination election record and poll book — Delivery of ballot to elector. — (1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book.

(2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein and

show a valid photo identification as provided for in section 34-1113, Idaho Code, or personal identification affidavit as provided for in section 34-1114, Idaho Code.

(3) No person shall knowingly sign his name in the combination election record and poll book if his residence address is not within that precinct at the time of signing.

(4) If the residence address of a person contained in the combination election record and poll book is incorrectly given due to an error in preparation of the combination election record and poll book, the judge shall ascertain the correct address and make the necessary correction.

(5) The elector shall then be given the appropriate ballots which have been marked with the official election ballot identification and shall be given folding instructions for such ballots.

History.
1970, ch. 140, § 178, p. 351; am. 1972, ch. 349, § 2, p. 1033; am. 2010, ch. 246, § 1, p. 634; am. 2013, ch. 285, § 6, p. 735.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 246, added "and show a valid photo identification as provided for in section 34-1113, Idaho Code, or personal identification affidavit as provided for in section 34-1114, Idaho Code" in subsection (2).

The 2013 amendment, by ch. 285, in subsection (5), substituted "marked" for "stamped" and "ballot identification" for "stamp."

34-1108. Assistance to voter. — (1) If any registered elector is unable, due to physical or other disability, to enter the polling place, he may be handed a ballot outside the polling place but within forty (40) feet thereof by one (1) of the election clerks, and in his presence but in a secret manner, mark and return the same to such election officer who shall proceed as provided by law to record the ballot.

(2) If any registered elector, who is unable by reason of physical or other disability to record his vote by personally marking his ballot and who desires to vote, then and in that case such elector shall be given assistance by the person of his choice or by one (1) of the election clerks. Such clerk or selected person shall mark the ballot in the manner directed by the elector and fold it properly and present it to the elector before leaving the voting compartment or area provided for such purpose. The elector shall then present it to the judge of election in the manner provided above.

History.
1970, ch. 140, § 180, p. 351; am. 1972, ch. 349, § 4, p. 1033; am. 1978, ch. 37, § 1, p. 66; am. 2010, ch. 235, § 19, p. 542.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 235, in subsections (1) and (2), substituted "physical or other disability" for "physical disability or other handicap."

34-1113. Identification at the polls. — All voters shall be required to

provide personal identification before voting at the polls or at absent electors polling places as required by section 34-1006, Idaho Code. The personal identification that may be presented shall be one of the following:

(1) An Idaho driver's license or identification card issued by the Idaho transportation department;

(2) A passport or an identification card, including a photograph, issued by an agency of the United States government;

(3) A tribal identification card, including a photograph; or

(4) A current student identification card, including a photograph, issued by a high school or an accredited institution of higher education, including a university, college or technical school, located within the state of Idaho.

History.
I.C., § 34-1113, as added by 2010, ch. 246, § 2, p. 634.

34-1114. Affidavit in lieu of personal identification. — If a voter is not able to present personal identification as required in section 34-1113, Idaho Code, the voter may complete an affidavit in lieu of the personal identification. The affidavit shall be on a form prescribed by the secretary of state and shall require the voter to provide the voter's name and address. The voter shall sign the affidavit. Any person who knowingly provides false, erroneous or inaccurate information on such affidavit shall be guilty of a felony.

History.
I.C., § 34-1114, as added by 2010, ch. 246, § 3, p. 634.

CHAPTER 12

CANVASS OF VOTES

SECTION.
34-1201. Canvass of votes.
34-1205. County board of canvassers — Meetings.
34-1206. Board's statement of votes cast.
34-1208. Certificates of nomination or election.

34-1201. Canvass of votes. — (1) When the polls are closed the judges must immediately proceed to count the ballots cast at such election. The counting must be continued without adjournment until completed and the result declared.

(2) If the precinct has duplicate ballot boxes, the counting may begin after five (5) ballots have been cast. At this time, the additional clerks shall close the first ballot box and retire to the counting area and count the ballots. Upon completion of this counting the clerks shall return the ballot box and then proceed to count all of the ballots cast in the second box during this period. This counting shall continue until the polls are closed at which time all election personnel shall complete the counting of the ballots.

(3) The county clerk may designate paper ballots be returned to a central count location for counting by special counting boards. If the paper ballots

are to be counted at a central count location, a procedure may be adopted to deliver the voted ballots to the county clerk prior to the closing of the polls. The results of this early count shall not be released to the public until after 8:00 p.m. of election day.

History.
1970, ch. 140, § 185, p. 351; am. 2011, ch. 285, § 11, p. 778.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 285, substituted "may begin" for "shall begin" in the first sentence in subsection (2) and added subsection (3).

Effective Dates.
Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

34-1205. County board of canvassers — Meetings. — The county board of commissioners shall be the county board of canvassers and the county clerk shall serve as their secretary for this purpose. The county board of canvassers shall meet within seven (7) days after the primary election and within ten (10) days after the general election for the purpose of canvassing the election returns of all precincts within the county.

History.
1970, ch. 140, § 189, p. 351; am. 1972, ch. 193, § 2, p. 480; am. 1975, ch. 174, § 15, p. 469; am. 2012, ch. 33, § 13, p. 103.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 34, deleted "or presidential preference primary" following "primary" near the middle of the last sentence.

Effective Dates.
Section 15 of S.L. 2012, ch. 33 declared an emergency. Approved March 1, 2012.

34-1206. Board's statement of votes cast. — The board shall examine and make a statement of the total number of votes cast for all candidates or special questions that shall have been voted upon at the election. The statement shall set forth the special questions and the names of the candidates for whom the votes have been cast. It shall also include the total number of votes cast for each candidate for office by precinct or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code, and the total number of affirmative and negative votes cast for any special question by precinct or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code. The board shall certify that such statement is true, subscribe their names thereto, and deliver it to the county clerk.

History.
1970, ch. 140, § 190, p. 351; am. 2012, ch. 211, § 7, p. 571.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 211, inserted "or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code" twice in the third sentence.

Effective Dates.
Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

34-1208. Certificates of nomination or election. — Immediately after the primary election canvass the county clerk shall issue certificates of nomination to the political party candidates of each party who receive the highest number of votes for their particular county office, and the candidates so certified shall have their names placed on the general election ballot. On or before the eighth day after the primary election canvass, the county clerk shall issue certificates of election to the precinct committeemen of each political party who receive the highest number of votes in their precinct. Provided that to be elected, a precinct committeeman shall receive a minimum of five (5) votes. In the event no candidate receives the minimum number of votes required to be elected, a vacancy in the office shall exist and shall be filled as otherwise provided by law. The county clerk shall also certify by registered mail the results of the primary election to the secretary of state. The form for such certificate shall be prescribed by the secretary of state and be uniform throughout the state.

History.
1970, ch. 140, § 192, p. 351; am. 1975, ch. 174, § 18, p. 469; am. 1977, ch. 17, § 1, p. 35; am. 1979, ch. 309, § 11, p. 833; am. 1991, ch. 117, § 1, p. 246; am. 2012, ch. 33, § 14, p. 103.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 34, deleted "both" following "results of" and substituted "the primary election" for "the primary and the presidential primary elections" in the fifth sentence.

Effective Dates.
Section 15 of S.L. 2012, ch. 33 declared an emergency. Approved March 1, 2012.

CHAPTER 14

UNIFORM DISTRICT ELECTION LAW

SECTION.
34-1401. Election administration.
34-1402. Registration.
34-1404. Declaration of candidacy.
34-1405. Notice of election filing deadline.
34-1405A. Withdrawal of candidacy.
34-1406. Notice of election.
34-1407. Write-in candidates.
34-1408. Absentee ballots.
34-1410. Canvassing of election results.
34-1411. Payment of election expenses by county.
34-1412. Terms of office going beyond next election date.
34-1413. Procedures for certain political subdivision elections to modify voting procedures.

34-1401. Election administration. — Notwithstanding any provision to the contrary, the county clerk shall administer all elections on behalf of any political subdivision, subject to the provisions of this chapter, including all special district elections and elections of special questions submitted to

the electors as provided in this chapter. Water districts governed by chapter 6, title 42, Idaho Code, recreational water and/or sewer districts as defined in section 42-3202A, Idaho Code, ground water recharge districts governed by chapter 42, title 42, Idaho Code, ground water management districts governed by chapter 51, title 42, Idaho Code, ground water districts governed by chapter 52, title 42, Idaho Code, and irrigation districts governed by title 43, Idaho Code, are exempt from the provisions of this chapter. Municipal elections shall be conducted under the provisions of this chapter except for the specific provisions of chapter 4, title 50, Idaho Code. All school district and highway district elections shall be conducted pursuant to the provisions of this chapter 14, title 34, Idaho Code. All highway district and school district elections shall be administered by the clerk of the county wherein the district lies. Elections in a joint school district or other political subdivisions that extend beyond the boundaries of a single county shall be conducted jointly by the clerks of the respective counties, and the clerk of the home county shall exercise such powers as are necessary to coordinate the election. "Home county" shall be defined as the county in which the business office for the district or political subdivision is located. For the purposes of achieving uniformity, the secretary of state shall, from time to time, provide directives and instructions to the various county clerks. Unless a specific exception is provided in this chapter, the provisions of this chapter shall govern in all questions regarding the conduct of elections on behalf of all political subdivisions. In all matters not specifically covered by this chapter, other provisions of title 34, Idaho Code, governing elections shall prevail over any special provision which conflicts therewith.

The county clerk shall conduct the elections for political subdivisions and shall perform all necessary duties of the election official of a political subdivision including, but not limited to, notice of the filing deadline, notice of the election, and preparation of the election calendar.

History.

I.C., § 34-1401, as added by 1992, ch. 176, § 4, p. 553; am. 1993, ch. 313, § 5, p. 1157; am. 1993, ch. 379, § 1, p. 1392; am. 1996, ch. 298, § 1, p. 977; am. 2009, ch. 341, § 59, p. 993; am. 2010, ch. 185, § 9, p. 382; am. 2011, ch. 11, § 15, p. 24.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

The 2010 amendment, by ch. 185, in the first paragraph, inserted "recreational water and/or sewer districts as defined in section 42-3202A, Idaho Code" in the second sentence, inserted "or other political subdivisions that extend beyond the boundaries of a single county" in the fifth sentence, and added the sixth sentence.

The 2011 amendment, by ch. 11, in the first paragraph, inserted the third sentence and deleted "municipal" following "All" at the beginning of the fourth sentence.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

JUDICIAL DECISIONS

Cited in: Brannon v. City of Coeur d'Alene, — Idaho —, 292 P.3d 234 (2012).

34-1402. Registration. — All electors must register with the county clerk before being able to vote in any primary, general, special or any other election conducted in this state. The county clerk shall determine, for each registered elector, the elections for which he is eligible to vote by a determination of the applicable code areas. The determination of tax code area shall be made for all political subdivisions including those otherwise exempt from the provisions of this chapter.

The county clerk shall conform to the provisions of chapter 4, title 34, Idaho Code, in the administration of registration for all political subdivisions within the county.

History.

I.C., § 34-1402, as added by 1992, ch. 176, § 4, p. 553; am. 2003, ch. 48, § 13, p. 181; am. 2011, ch. 285, § 12, p. 778.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 285, deleted the former last sentence in the second paragraph, which read: "The county clerk shall appoint each city clerk for any city within the county and each election official designated by a political subdivision, as an at-large registrar as provided in section 34-406, Idaho Code, except that no compensation shall be paid by the county clerk for electors registered by these special registrars."

Effective Dates.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

34-1404. Declaration of candidacy. — Candidates for election in any political subdivision shall be nominated by nominating petitions, each of which shall bear the name of the nominee, the office for which the nomination is made, the term for which nomination is made, bear the signature of not less than five (5) electors of the candidate's specific zone or district of the political subdivision, and be filed with the clerk of the political subdivision. The form of the nominating petition shall be as provided by the county clerk and shall be uniform for all political subdivisions. For an election to be held on the third Tuesday in May, in even-numbered years, the nomination petition shall be filed during the period specified in section 34-704, Idaho Code. The clerk of the political subdivision shall verify the qualifications of the nominees and shall, no more than seven (7) days after the close of filing, certify the nominees and any special questions placed by action of the governing board of the political subdivision. For an election to be held on the first Tuesday after the first Monday of November, in even-numbered years, the nomination shall be filed on or before September 1. The clerk of the political subdivision shall verify the qualifications of the nominees, and shall not later than seven (7) days after the close of filing, certify the nominees and any special questions placed by action of the governing board of the political subdivisions. For all other elections, the nomination shall be filed not later than 5:00 p.m. on the ninth Friday preceding the election for which the nomination is made. The clerk of the

political subdivision shall verify the qualifications of the nominee, and shall not more than seven (7) days following the filing certify the nominees and any special questions, placed by action of the governing board of the political subdivisions, to be placed on the ballot of the political subdivision.

History.
I.C., § 34-1404, as added by 1993, ch. 313, § 8, p. 1157; am. 2009, ch. 341, § 60, p. 993; am. 2010, ch. 185, § 10, p. 382; am. 2011, ch. 11, § 16, p. 24.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, substituted "third Tuesday" for "fourth Tuesday" in the third sentence.

The 2010 amendment, by ch. 185, substituted "clerk of the political subdivision" for "election official of the political subdivision" in the first sentence.

The 2011 amendment, by ch. 11, substituted "The clerk of the political subdivision" for "The election official" at the beginning of the fourth, sixth and eighth sentences and substituted "ninth Friday" for "sixth Friday" near the middle of the seventh sentence.

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

34-1405. Notice of election filing deadline. — (1) Not more than fourteen (14) nor less than seven (7) days preceding the candidate filing deadline for an election, the county clerk shall cause to be published a notice of the forthcoming candidate filing deadline for all taxing districts. The notice shall include not less than the name of the political subdivision, the place where filing for each office takes place, and a notice of the availability of declarations of candidacy. The notice shall be published in the official newspaper of the political subdivision.

(2) The secretary of state shall compile an election calendar annually which shall include not less than a listing of the political subdivisions which will be conducting candidate elections in the forthcoming year, the place where filing for each office takes place, and the procedure for a declaration of candidacy. Annually in December, the county clerk shall cause to be published the election calendar for the county for the following calendar year. This publication shall be in addition to the publication required by paragraph (1) of this section. The election calendar for the county shall be published in at least two (2) newspapers published within the county, but if this is not possible, the calendar shall be published in one (1) newspaper which has general circulation within the county. Copies of the election calendar shall be available, without charge, from the office of the secretary of state or the county clerk.

History.
I.C., § 34-1405, as added by 1992, ch. 176, § 4, p. 553; am. 1993, ch. 313, § 9, p. 1157; am. 2009, ch. 341, § 61, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, added the subsection (1) designation, and therein substituted "county clerk" for "election official of each political subdivision," and added "for all taxing districts" in the first sentence; and

deleted the former third and fourth sentences, which read: "It shall be the duty of the election official of each political subdivision to notify the county clerk, not later than the last day of November, of any election for that political subdivision to occur during the next calendar year. In the event of failure to so notify the county clerk, the election official of the political subdivision shall cause to be published notice of the omitted election as soon as he is aware of the omission."

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

34-1405A. Withdrawal of candidacy. — A candidate for nomination or candidate for election to an office may withdraw from the election by filing a notarized statement of withdrawal with the officer with whom his declaration of candidacy was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. A candidate may not withdraw later than forty-five (45) days before an election.

History.

I.C., § 34-1405A, as added by 2011, ch. 11, § 17, p. 24.

STATUTORY NOTES

Effective Dates.

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

34-1406. Notice of election. — The county clerk shall give notice for each political subdivision for any election by publishing such notice in the official newspaper of the county. The notice shall state the date of the election, the polling places, and the hours during which the polls shall be open for the purpose of voting. The first publication shall be made not less than twelve (12) days prior to the election, and the last publication of notice shall be made not less than five (5) days prior to the election. For each primary, general and special election, the county clerk shall cause to be published a facsimile, except as to size, of the sample ballot in at least two (2) newspapers published within the county, but if this is not possible, the sample ballot shall be published in one (1) newspaper published within the county or one (1) newspaper that has general circulation within the county. Such publication shall be in conjunction with the second notice of election required by this section. The political subdivision shall notify the county clerk in writing of the official newspaper of the political subdivision.

History.

I.C., § 34-1406, as added by 1992, ch. 176, § 4, p. 553; am. 1993, ch. 313, § 10, p. 1157; am. 2009, ch. 341, § 62, p. 993; am. 2011, ch. 11, § 18, p. 24.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in the first sentence, substituted "county clerk" for "election official of each political subdivision," inserted "for each political subdivision," and substituted "newspaper of the county" for "newspaper of the political subdivision"; and added the last three sentences.

The 2011 amendment, by ch. 11, substituted "official newspaper of the political sub-

division" for "county's newspaper" at the end of the last sentence.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

34-1407. Write-in candidates. — No write-in candidate for any nonpartisan elective office shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of the office. The declaration of intent shall be filed with the clerk of the political subdivision not less than forty-five (45) days before the date of the election.

If the statutes governing elections within a specific political subdivision provide that no election shall be held in the event that no more than one (1) candidate has filed for an office, that statute shall be interpreted in such a manner as to allow for filing a declaration of intent for a write-in candidate until forty-five (45) days preceding the election. However, if no candidate has filed within that time, no election shall be held for that political subdivision. The provisions of this section shall not apply to candidates in the primary or general election covered by the provisions of section 34-702A, Idaho Code.

History.

I.C., § 34-1407, as added by 1992, ch. 176, § 4, p. 553; am. 1993, ch. 313, § 11, p. 1157; am. 1997, ch. 362, § 1, p. 1069; am. 2011, ch. 11, § 19, p. 24.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 11, substituted "clerk of the political subdivision" for "election official" in the last sentence of the first paragraph and substituted "forty-five (45) days" for "twenty-five (25) days" in the last sentence of the first paragraph and near the end of the first sentence of the second paragraph.

Effective Dates.

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

34-1408. Absentee ballots. — Any registered elector may vote at any election by absentee ballot as provided in chapter 10, title 34, Idaho Code. In the event of a written application to the county clerk for an absentee ballot, the application shall be deemed to be an application for all ballots to be voted in the election, and the county clerk shall provide the ballot of the political subdivision to the elector.

History.

I.C., § 34-1408, as added by 1992, ch. 176, § 4, p. 553; am. 2010, ch. 185, § 11, p. 382.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 185, deleted "notify the election official of each political subdivision conducting an election at that

date, and the election official shall" following "and the county clerk shall" in the second sentence.

34-1410. Canvassing of election results. — The board of county commissioners shall conduct the canvass of the election results within ten (10) days after the election, in the manner provided in chapter 12, title 34, Idaho Code. The county clerk shall certify the election results to the clerk of each political subdivision for which an election was held. Each political subdivision shall issue the appropriate certificates of election.

History.

I.C., § 34-1410, as added by 1992, ch. 176, § 4, p. 553; am. 2010, ch. 185, § 12, p. 382; am. 2011, ch. 11, § 20, p. 24.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 185, in the first sentence, substituted "The board of county commissioners" for "Each political subdivision"; and added the second sentence.

The 2011 amendment, by ch. 11, inserted "within ten (10) days after the election" in the first sentence.

Effective Dates.

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

34-1411. Payment of election expenses by county. — (1) On and after January 1, 2011, no county shall charge any taxing district, as defined in section 63-201, Idaho Code, for expenses associated with conducting any election on behalf of any taxing district, with the exception of expenses associated with conducting municipal runoff elections, which shall be paid by the city adopting runoff elections pursuant to the provisions of section 50-612 or 50-707B, Idaho Code. Expenses associated with conducting taxing district elections shall include:

(a) Costs of ballot preparation, distribution, printing and counting, including absentee ballots.

(b) Costs of printing poll books and costs of tally books, stamps, signs and any other voting supplies, publications and equipment.

(c) Wages or other compensation for election judges and clerks or any county employees or officials performing duties associated with conducting taxing district elections.

(d) Costs paid for renting polling facilities.

(e) Acquisition, repair, maintenance or any other costs associated with voting machines or vote tally systems as defined in subsections (9) and (10) of section 34-2401, Idaho Code.

(f) Costs of publishing and printing election notices and ballots.

(2) Counties shall not be responsible for any election expenses prior to the time any taxing district orders an election, such as notice and costs for public hearings and notice and costs for public hearings on ballot measures.

(3) Notwithstanding the provisions of subsection (1) of this section, all ballot questions shall be limited to two hundred fifty (250) words or less. If a ballot question is in excess of two hundred fifty (250) words, the entity proposing a ballot question that is not a state constitutional amendment

shall be required to pay the ballot printing costs associated with the ballot question.

History.
I.C., § 34-1411, as added by 2009, ch. 341, § 63, p. 993.

STATUTORY NOTES

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

RESEARCH REFERENCES

A.L.R. — Validity of runoff voting election methodology. 67 A.L.R.6th 609.

34-1412. Terms of office going beyond next election date. — Notwithstanding any other provision of law to the contrary, whenever a member of the governing board of a taxing district has been elected to a term of office that goes beyond the next election date as provided by statute, such member of the governing board shall be entitled to serve his or her term of office and shall continue to serve until the following election provided by statute. All governing board members elected on and after January 1, 2011, shall serve terms of office beginning and ending as otherwise provided by statute.

History.
I.C., § 34-1412, as added by 2011, ch. 11, § 21, p. 24.

STATUTORY NOTES

Effective Dates.
Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

34-1413. Procedures for certain political subdivision elections to modify voting procedures. — Any county that has a political subdivision in which there is more than one (1) county contained in the political subdivision boundaries and that wishes to modify voting procedures shall submit an election plan to the secretary of state for approval for the modified voting procedures to be effective at least forty (40) calendar days prior to an election. The secretary of state shall notify the political subdivision of its approval, disapproval and, if it is disapproved, what remedial measures may be taken that would allow for approval of the voting plan.

History.
I.C., § 34-1413, as added by 2011, ch. 285, § 13, p. 778.

STATUTORY NOTES

Effective Dates.
Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

CHAPTER 17
RECALL ELECTIONS

SECTION.
34-1702. Required signatures on petition.
34-1703. Form of petition.
34-1704. Printing of petition and sheets for signatures — Time limits for perfecting petition.
34-1706. Examination and certification of signatures.
34-1707. Sufficiency of petition — Notification — Effect of resignation — Special election.
34-1711. Canvass of returns.
34-1712. General election laws control.
34-1713. Time within which recall may be filed — Removal of signatures.

34-1701. Officers subject to recall.

RESEARCH REFERENCES

Idaho Law Review. — Legislative Power at Odds: The Effect of a Referendum Petition in Idaho, Comment. 48 Idaho L. Rev. 553 (2012).

A.L.R. — Constitutionality of state and local recall provisions. 13 A.L.R.6th 661.

34-1702. Required signatures on petition. — A petition for recall of an officer shall be instituted by filing with the appropriate official a verified written petition requesting such recall.

(1) If the petition seeks recall of any of the officers named in subsection (1)(a) of section 34-1701, Idaho Code, the petition shall be filed with the secretary of state, and must be signed by registered electors equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held to elect a governor.

(2) If the petition seeks recall of any of the officers named in subsection (1)(b) of section 34-1701, Idaho Code, the petition shall be filed with the secretary of state, and must be signed by registered electors of the legislative district equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held in the legislative district at which the member was elected.

(3) If the petition seeks recall of any of the officers named in subsection (2)(a) of section 34-1701, Idaho Code, the petition shall be filed with the county clerk, and must be signed by registered electors of the county equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held in the county for the election of county officers at which the officer was elected.

(4) If the petition seeks recall of any of the officers named in subsection (3) of section 34-1701, Idaho Code, the petition shall be filed with the city clerk, and must be signed by registered electors of the city equal in number to twenty percent (20%) of the number of electors registered to vote at the last general city election held in the city for the election of officers.

(5) If the petition seeks recall of any of the officers named in subsection (4) of section 34-1701, Idaho Code, the petition shall be filed with the county clerk of the county wherein the district is located. If the district is located in two (2) or more counties, the clerk in each county shall perform the functions within that county. The petition must be signed by registered electors of the district or school trustee zone equal in number to fifty percent (50%) of the number of electors who cast votes in the last election of the district or school trustee zone. If no district election has been held in the last six (6) years, the petition must be signed by twenty percent (20%) of the number of electors registered to vote in the district or school trustee zone at the time the petition is filed.

History.
I.C., § 34-1702, as added by 1972, ch. 283, § 3, p. 703; am. 1995, ch. 266, § 2, p. 848; am. 2003, ch. 57, § 1, p. 200; am. 2012, ch. 211, § 8, p. 571.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 211, inserted "or school trustee zone" three times in the last two sentences in subsection (5).

Effective Dates.
Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

34-1703. Form of petition. — (1) The recall petition for state officers other than members of the state legislature shall be in substantially the following form:

RECALL PETITION

To the honorable, Secretary of State for the State of Idaho:

We, the undersigned citizens and registered electors of the State of Idaho respectfully demand that, holding the office of, be recalled by the registered electors of this state for the following reasons, to-wit: (setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of the State of Idaho; my residence, address including city, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date

(Here follow twenty numbered lines for signatures.)

(2) The recall petition for members of the state legislature shall be in substantially the following form:

RECALL PETITION

To the honorable, Secretary of State for the State of Idaho:

We, the undersigned citizens and registered electors of Legislative District No., respectfully demand that, holding the office of, be

recalled by the registered electors of Legislative District No. for the following reasons, to-wit:
(setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of Legislative District No., my residence, address including city, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date

(Here follow twenty numbered lines for signatures.)

(3) The recall petition for county officers shall be in substantially the following form:

RECALL PETITION

To the honorable, County Clerk for the County of:
We, the undersigned citizens and registered electors of the County of, respectfully demand that, holding the office of, of the County of, be recalled by the registered electors of the County of for the following reasons, to-wit:
(setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of the County of, my residence, address including city, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date

(Here follow twenty numbered lines for signatures.)

(4) The recall petition for city officers shall be in substantially the following form:

RECALL PETITION

To the honorable, City Clerk for the City of:
We, the undersigned citizens and registered electors of the City of, respectfully demand that, holding the office of, of the City of, be recalled by the registered electors of the City of for the following reasons, to-wit:
(setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of the City of, my residence, address including city, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date

(Here follow twenty numbered lines for signatures.)

(5) The recall petition for special district officers shall be in substantially the following form:

RECALL PETITION

To the honorable, County Clerk of the County of:

We, the undersigned citizens and registered electors of (here insert the official name of the district), respectfully demand that, holding the office of, of the (district), be recalled by the registered electors of the (district) for the following reasons, to-wit: (insert the reasons for the recall in two hundred (200) words or less); that a special election therefor be called, that we, each for himself say: I am a registered elector of the (district), my residence, address including city, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date

(Here follow twenty numbered lines for signatures.)

History.

I.C., § 34-1703, as added by 1972, ch. 283, § 3, p. 703; am. 1989, ch. 344, § 1, p. 867; am. 1995, ch. 266, § 3, p. 848; am. 2013, ch. 135, § 5, p. 307.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 135, throughout the section, substituted "address including city" for "post office address" and "City" for "City or Post Office" in the petition templates.

Effective Dates.

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

34-1704. Printing of petition and sheets for signatures — Time limits for perfecting petition. — (1) Before or at the time of beginning to circulate any petition for the recall of any officer subject to recall, the person or persons, organization or organizations under whose authority the recall petition is to be circulated, shall send or deliver to the secretary of state, county clerk, or city clerk, as the case may be, a copy of a prospective petition duly signed by at least twenty (20) electors eligible to sign such petition. The receiving officer shall immediately examine the petition and specify the form and kind and size of paper on which the petition shall be printed and circulated for further signatures. All petitions and signature sheets for recall shall be printed on a good quality bond paper of standardized size in substantial conformance within the provisions of section 34-1703, Idaho

Code. To every sheet of petitioners' signatures shall be attached a full and correct copy of the recall petition.

(2) The secretary of state, county clerk, or city clerk, as the case may be, shall indicate in writing on the prospective recall petition that he has approved it as to form and the date of such approval. Upon approval as to form, the secretary of state, county clerk, or city clerk, shall inform the person or persons, organization or organizations under whose authority the recall petition is to be circulated, in writing, that the petition must be perfected with the required number of signatures within seventy-five (75) days following the date of approval as to form. Signatures on the prospective petition shall not be counted toward the required number of signatures. Any petition that does not contain the required number of signatures within the seventy-five (75) days allowed shall be declared null and void ab initio in its entirety.

History.

I.C. § 34-1704, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 2, p. 302; am. 2004, ch. 164, § 1, p. 533; am. 2013, ch. 135, § 6, p. 307.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 135, substituted "signatures" for "certified signatures" throughout the section; deleted "or ledger" following "good quality bond" in the third sentence of subsection (1); and substituted "does not contain the required number of" for "has not been perfected with the required number of" in the last sentence of subsection (2).

Effective Dates.

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

34-1706. Examination and certification of signatures. — All petitions with attached signature sheets shall be filed on the same day with the secretary of state, county clerk, or city clerk, as the case may be. The secretary of state or the city clerk shall promptly transmit the petitions and attached signature sheets to the county clerk. An examination to verify whether or not the petition signers are qualified electors shall be conducted by the county clerk and a certificate shall be attached to the signature sheets as provided in section 34-1807, Idaho Code. This examination shall not exceed fifteen (15) business days from the date of receipt of the petitions.

History.

I.C., § 34-1706, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 3, p. 302; am. 1995, ch. 266, § 4, p. 848; am. 2004, ch. 164, § 3, p. 533; am. 2013, ch. 135, § 7, p. 307.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 135, inserted "and a certificate shall be attached to the signature sheets" in the next-to-last sentence.

Effective Dates.

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

34-1707. Sufficiency of petition — Notification — Effect of resignation — Special election. — (1) In the event that a petition filed with the secretary of state is found by the secretary of state to contain the

required number of certified signatures, the secretary of state shall promptly provide written notice to the officer being recalled, and the petitioner informing them, that the recall petition is in proper form.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the secretary of state, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the secretary of state, a special election shall be ordered by the secretary of state, unless he is the officer being recalled, in which event the governor shall order such special election. The special election must be held on the date prescribed in section 34-106, Idaho Code. If the officer being recalled is one (1) specified in section 34-1701(1)(a), Idaho Code, the special election shall be conducted statewide. If the officer being recalled is one (1) specified in section 34-1701(1)(b), Idaho Code, the special election shall be conducted only in the legislative district.

(2) In the event that a petition filed with the county clerk is found by the county clerk to contain the required number of certified signatures, the county clerk shall promptly provide written notice to the officer being recalled, and the petitioner, informing them that the recall petition is in proper form.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the county clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the county clerk, a special election shall be ordered by the county clerk. The special election must be held on the date prescribed in section 34-106, Idaho Code. The special election shall be conducted countywide.

(3) In the event that a petition filed with the county clerk concerning the recall of an official of a special district is found by the county clerk to contain the required number of certified signatures, the county clerk shall promptly provide written notice to the officer being recalled, and the petitioner, and the governing board of the special district informing them that the recall petition is in proper form.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the county clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the county clerk, a special election shall be ordered by the governing board of the special district. The special election must be held on the date prescribed in section 34-106, Idaho Code. The election shall be conducted by the county clerk in the manner provided in section 34-1401, Idaho Code.

(4) In the event that a petition filed with a city clerk is found by the city clerk to contain the required number of certified signatures, the city clerk

shall promptly provide written notice to the officer being recalled, and the petitioner, informing them that the recall petition is in proper form.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the city clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the city clerk, a special election shall be ordered by the city clerk. The special election must be held on the date prescribed in section 34-106, Idaho Code. The election shall be conducted by the county clerk in the manner provided in section 34-1401, Idaho Code, and shall be conducted citywide.

(5) In the event that a petition is found not to have the required number of signatures, the officer shall continue in office and no new recall petition may be circulated for a period of ninety (90) days against the same officer.

History.

I.C., § 34-1707, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 4, p. 302; am. 1989, ch. 344, § 2, p. 867; am. 1993, ch. 313, § 13, p. 1157; am. 1994, ch. 54, § 6, p. 93; am. 1995, ch. 266, § 5, p. 848; am. 2004, ch. 164, § 4, p. 533; am. 2012, ch. 211, § 9, p. 571; am. 2013, ch. 135, § 8, p. 307.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 211, in paragraph (3)(b), in the last sentence, substituted "county clerk" for "special district" and deleted "and the special district may contract with the county clerk as provided in section 34-1401, Idaho Code" from the end; and, in paragraph (4)(b), in the last sentence, deleted "special" preceding "election" and inserted "by the county clerk in the manner provided in section 34-1401, Idaho Code, and shall be conducted."

The 2013 amendment, by ch. 135, substituted "provide written notice to the officer being recalled, and the petitioner informing them" for "by certified mail, inform the officer being recalled, and the petitioner" in the introductory paragraph of subsections (1), (2), (3), and (4) and substituted "provide written notice to the officer being recalled, and the petitioner, and the governing board of the special district informing them" for "by certified mail, inform the officer being recalled, and the petitioner, and the governing board and election officials of the special district" in the introductory paragraph in subsection (3).

Effective Dates.

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

34-1711. Canvass of returns. — (1) The board of county commissioners shall act as the board of canvassers for all special recall elections that involve elections held wholly or partly within their county.

(a) For all special recall elections involving state officers, the board of county commissioners shall meet within ten (10) days after said election to canvass the votes cast at such election, and shall immediately transmit to the secretary of state an abstract of the votes cast.

(b) Within fifteen (15) days following the special recall election held to recall a state officer, the state board of canvassers shall meet and canvass the votes cast at such election, and the secretary of state shall immediately after the completion thereof, proclaim the results.

(c) For all special recall elections involving county officers, the board of county commissioners shall meet within ten (10) days after said election

to canvass the votes cast at such election, and the county clerk shall immediately after the completion thereof, proclaim the results.

(d) For all special recall elections involving city or special district officials, the board of county commissioners shall meet within ten (10) days after said election to canvass the votes cast at such election, and the county clerk shall immediately after the completion thereof, proclaim the results. The county clerk shall certify the results of the recall election to the clerk of the political subdivision for which the election was held.

History.
I.C., § 34-1711, as added by 1972, ch. 283, § 3, p. 703; am. 2004, ch. 164, § 5, p. 533; am. 2013, ch. 135, § 9, p. 307.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 135, deleted "involving state and county officers" following "special recall elections" in the introductory paragraph in subsection (1); and, in paragraph (1)(d), substituted "or special district officials, the board of county commissioners shall meet within ten (10) days after said election to canvass the votes cast at such election, and the county clerk shall immediately after the completion thereof, proclaim the results" for "officers, the mayor and council shall meet within six (6) days after said election to canvass the votes cast at such election, and the city clerk shall immediately after the completion thereof, proclaim the results" in the first sentence and added the last sentence.

Compiler's Notes.
As enacted in 1972, this section contains a subsection (1), but no subsection (2).

Effective Dates.
Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

34-1712. General election laws control. — (1) The provisions relating to general elections, including the payment of expenses of conducting the recall election, shall govern special recall elections except where otherwise provided.

(2) Whenever a special recall election is ordered, notice must be issued in the same manner as for a general election.

(3) To recall any officer, a majority of the votes cast at the special recall election must be in favor of such recall, and additionally, the number of votes cast in favor of the recall must equal or exceed the votes cast at the last general election for that officer. If the officer was appointed or was not required to stand for election, then a majority of the votes cast in the recall election shall be the number necessary for recall.

(4) If recalled, an officer shall be recalled as of the time when the results of the special recall election are proclaimed, and a vacancy in the office shall exist.

(5) If an officer is recalled from his office the vacancy shall be filled in the manner provided by law for filling a vacancy in that office arising from any other cause.

History.
I.C., § 34-1712, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 5, p. 302; am. 2003, ch. 57, § 2, p. 200; am. 2013, ch. 135, § 10, p. 307.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 135, deleted "and posted" following "notice must be issued" in subsection (2).

Effective Dates.
Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

34-1713. Time within which recall may be filed — Removal of signatures. — (1) No petition for a recall shall be circulated against any officer until he has actually held office under the current term for at least ninety (90) days.

(2) After one (1) special recall election, no further recall petition shall be filed against the same officer during his current term of office, unless the petitioners first pay into the public treasury which has paid such special recall election expenses the whole amount of the expenses for the preceding recall election. The specific reason for recall in one (1) recall petition for which an election has been held cannot be the basis for a second recall petition during that current term of office.

(3) The signer of any recall petition may remove his own name from the petition by crossing out, obliterating, or otherwise defacing his own signature at any time prior to the time when the petition is filed.

History.
I.C., § 34-1713, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 6, p. 302; am. 2004, ch. 164, § 6, p. 533; am. 2013, ch. 135, § 11, p. 307.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 135, substituted "office under the current term for at least" for "his office" in subsection (1) and inserted "for which an election has been held" in the last sentence of subsection (2).

Effective Dates.
Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

CHAPTER 18

INITIATIVE AND REFERENDUM ELECTIONS

SECTION.
34-1801A. Petition.
34-1802. Initiative petitions — Time for gathering signatures — Time for submission of signatures to the county clerk — Time for filing.
34-1804. Printing of petition and signature sheets.
34-1805. Sponsors to print petition — Number of signers required.
34-1807. Circulation of petitions — Verification of petition and signature sheets — Comparison of signatures with registration oaths and records — Certain petitions and signatures void.

34-1801A. Petition. — The following shall be substantially the form of petition for any law proposed by the initiative:

WARNING

It is a felony for anyone to sign any initiative or referendum petition with

any name other than his own, or to knowingly sign his name more than once for the measure, or to sign such petition when he is not a qualified elector.

INITIATIVE PETITION

To the Honorable, Secretary of State of the State of Idaho:
"We, the undersigned citizens and qualified electors of the State of Idaho, respectfully demand that the following proposed law, to-wit: (setting out full text of measure proposed) shall be submitted to the qualified electors of the State of Idaho, for their approval or rejection at the regular general election, to be held on the day of, A.D., ..., and each for himself says: I have personally signed this petition; I am a qualified elector of the State of Idaho; my residence and legislative district are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date	Legislative District Official use only

(Here follow twenty numbered lines for signatures.)

The petition for referendum on any act passed by the state legislature of the state of Idaho shall be in substantially the same form with appropriate title and changes, setting out in full the text of the act of the legislature to be referred to the people for their approval or rejection.

History.
1933, ch. 210, § 1, p. 431; am. 1988, ch. 48, § 1, p. 66; am. and redesig. 1997, ch. 266, § 1, p. 756; am. 2013, ch. 214, § 1, p. 503; am. 2013, ch. 336, § 1, p. 873.

STATUTORY NOTES

Amendments.
This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 214, in the Initiative Petition, substituted "legislative district" for "post office" near the end of the introductory language, deleted "or Post Office" following "City" in the column heading, and added the last two column headings.

The 2013 amendment, by ch. 336, in the Initiative Petition table head, substituted "Date" for "Legislative District" in the fifth column, and "Legislative District Official use only" in the sixth column.

Effective Dates.
Section 4 of S.L. 2013, ch. 336 provided: "This act shall be in full force and effect on and after July 1, 2013, and shall apply to those initiative or referendum petitions that have been assigned a ballot title by the Attorney General on and after July 1, 2013, and those initiative or referendum petitions filed prior to July 1, 2013, shall have the provisions of Chapter 18, Title 34, Idaho Code, that were in existence prior to July 1, 2013, apply to them."

34-1802. Initiative petitions — Time for gathering signatures — Time for submission of signatures to the county clerk — Time for filing. — (1) Except as provided in section 34-1804, Idaho Code, petitions for an initiative shall be circulated and signatures obtained beginning upon the date that the petitioners receive the official ballot title from the secretary of state and extending eighteen (18) months from that date or April 30 of the year of the next general election, whichever occurs earlier.

The last day for circulating petitions and obtaining signatures shall be the last day of April in the year an election on the initiative will be held.

(2) The person or persons or organization or organizations under whose authority the measure is to be initiated shall submit the petitions containing signatures to the county clerk for verification pursuant to the provisions of section 34-1807, Idaho Code. The signatures required shall be submitted to the county clerk not later than the close of business on the first day of May in the year an election on the initiative will be held, or eighteen (18) months from the date the petitioner receives the official ballot title from the secretary of state, whichever is earlier.

(3) The county clerk shall, within sixty (60) calendar days of the deadline for the submission of the signatures, verify the signatures contained in the petitions, but in no event shall the time extend beyond the last day of June in the year an election on the initiative will be held.

(4) Initiative petitions with the requisite number of signatures attached shall be filed with the secretary of state not less than four (4) months before the election at which they are to be voted upon.

History.
1933, ch. 210, § 2, p. 431; am. 1997, ch. 266, § 3, p. 756; am. 2011, ch. 285, § 14, p. 778.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 285, substituted "of the year of the next general election" for "of the year that an election on the initiative will be held" at the end of the first sentence.

Effective Dates.
Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

34-1803. Referendum petitions — Time for filing — When election held — Effective date of law.

RESEARCH REFERENCES

Idaho Law Review. — Legislative Power at Odds: The Effect of a Referendum Petition in Idaho, Comment. 48 Idaho L. Rev. 553 (2012).

34-1804. Printing of petition and signature sheets. — Before or at the time of beginning to circulate any petition for the referendum to the people on any act passed by the state legislature of the state of Idaho, or for any law proposed by the initiative, the person or persons or organization or organizations under whose authority the measure is to be referred or initiated shall send or deliver to the secretary of state a copy of such petition duly signed by at least twenty (20) qualified electors of the state which shall be filed by said officer in his office, and who shall immediately transmit a copy of the petition to the attorney general for the issuance of the certificate of review as provided in section 34-1809, Idaho Code. All petitions for the initiative and for the referendum and sheets for signatures shall be printed on a good quality of bond or ledger paper in the form and manner as approved by the secretary of state. To every sheet of petitioners' signatures

shall be attached a full and correct copy of the measure so proposed by initiative petition; but such petition may be filed by the secretary of state in numbered sections for convenience in handling. Every sheet of petitioners' signatures upon referendum petitions shall be attached to a full and correct copy of the measure on which the referendum is demanded, and may be filed in numbered sections in like manner as initiative petitions. Not more than twenty (20) signatures on one (1) sheet shall be counted. Each signature sheet shall contain signatures of qualified electors from only one (1) county.

History.
1933, ch. 210, § 4, p. 431; am. 1988, ch. 48, § 2, p. 66; am. 2013, ch. 214, § 2, p. 503; am. 2013, ch. 336, § 2, p. 873.

STATUTORY NOTES

Amendments.
This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 214, added "and legislative district" at the end of the last sentence.

The 2013 amendment, by ch. 336, deleted "and legislative district" at the end of the last sentence.

Effective Dates.
Section 4 of S.L. 2013, ch. 336 provided: "This act shall be in full force and effect on and after July 1, 2013, and shall apply to those initiative or referendum petitions that have been assigned a ballot title by the Attorney General on and after July 1, 2013, and those initiative or referendum petitions filed prior to July 1, 2013, shall have the provisions of Chapter 18, Title 34, Idaho Code, that were in existence prior to July 1, 2013, apply to them."

34-1805. Sponsors to print petition — Number of signers required. — After the form of the initiative or referendum petition has been approved by the secretary of state as in sections 34-1801A through 34-1822, Idaho Code, provided, the same shall be printed by the person or persons or organization or organizations under whose authority the measure is to be referred or initiated and circulated in the several counties of the state for the signatures of legal voters. Before such petitions shall be entitled to final filing and consideration by the secretary of state there shall be affixed thereto the signatures of legal voters equal in number to not less than six percent (6%) of the qualified electors at the time of the last general election in each of at least eighteen (18) legislative districts; provided however, the total number of signatures shall be equal to or greater than six percent (6%) of the qualified electors of the state at the time of the last general election.

History.
1933, ch. 210, § 5, p. 431; am. 1997, ch. 266, § 5, p. 756; am. 2007, ch. 202, § 7, p. 620; am. 2013, ch. 214, § 3, p. 503.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 214, inserted "at the time of the last general election in each of at least eighteen (18) legislative districts; provided however, the total number of signatures shall be equal to or greater than six percent (6%) of the qualified electors" in the last sentence.

RESEARCH REFERENCES

Idaho Law Review. — Legislative Power at Odds: The Effect of a Referendum Petition in Idaho, Comment. 48 Idaho L. Rev. 553 (2012).

34-1807. Circulation of petitions — Verification of petition and signature sheets — Comparison of signatures with registration oaths and records — Certain petitions and signatures void. — Any person who circulates any petition for an initiative or referendum shall be a resident of the state of Idaho and at least eighteen (18) years of age. Each and every sheet of every such petition containing signatures shall be verified on the face thereof in substantially the following form, by the person who circulated said sheet of said petition, by his or her affidavit thereon, and as a part thereof:

State of Idaho)
) ss.
County of)

I,...., being first duly sworn, say: That I am a resident of the State of Idaho and at least eighteen (18) years of age: that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence: I believe that each has stated his or her name, address and residence correctly, that each signer is a qualified elector of the State of Idaho, and a resident of the county of

Signed
Post-office address

Subscribed and sworn to before me this day of
(Notary Seal) Notary Public
Residing at

In addition to said affidavit the county clerk shall carefully examine said petitions and shall attach to the signature sheets a certificate to the secretary of state substantially as follows:

State of Idaho)
) ss.
County of)

To the honorable, Secretary of State for the State of Idaho: I, ..., County Clerk of County, hereby certify that signatures on this petition are those of qualified electors in legislative district number

Signed
County Clerk or Deputy.

(Seal of office)

The county clerk shall deliver the petition or any part thereof to the person from whom he received it with his certificate attached thereto as above provided. The forms herein given are not mandatory and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical error.

Any petition upon which signatures are obtained by a person not a resident of the state of Idaho and at least eighteen (18) years of age, shall be void. The definition of resident in section 34-107, Idaho Code, shall apply to

the circulators of initiative and referendum petitions. In addition to being a resident, a petition circulator shall be at least eighteen (18) years of age.

History.
1933, ch. 210, § 7, p. 431; am. 1988, ch. 48, § 4, p. 66; am. 1997, ch. 266, § 6, p. 756; am. 1999, ch. 47, § 1, p. 109; am. 2013, ch. 214, § 4, p. 503; am. 2013, ch. 336, § 3, p. 873.

STATUTORY NOTES

Amendments.
This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 214, in the affidavit form found in the first paragraph, substituted "legislative district" for "post office address" and inserted "legislative district number in"; and, in the affidavit form found in the second paragraph, inserted "in legislative district number"

The 2013 amendment, by ch. 336, in the first affidavit form, substituted "address" for "legislative district" and deleted "legislative district number in" following "and a resident of."

Effective Dates.
Section 4 of S.L. 2013, ch. 336 provided: "This act shall be in full force and effect on and after July 1, 2013, and shall apply to those initiative or referendum petitions that have been assigned a ballot title by the Attorney General on and after July 1, 2013, and those initiative or referendum petitions filed prior to July 1, 2013, shall have the provisions of Chapter 18, Title 34, Idaho Code, that were in existence prior to July 1, 2013, apply to them."

34-1821. Felonious acts enumerated.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state statutes regulating or proscribing payment in connection with gathering signatures on nominating petitions for public office or initiative petitions. 40 A.L.R.6th 317.

CHAPTER 19

CONGRESSIONAL DISTRICTS

SECTION.
34-1902. First congressional district. [Repealed.]
34-1903. Second congressional district. [Repealed.]

34-1902. First congressional district. [Repealed.]

Repealed by S.L. 2010, ch. 79, § 11, effective July 1, 2010.

History.
I.C., § 34-1902, as added by 1981 (Ex. Sess.), ch. 1, § 3, p. 4; am. 1992, ch. 1, § 1, p. 3.

34-1903. Second congressional district. [Repealed.]

Repealed by S.L. 2010, ch. 79, § 12, effective July 1, 2010.

History.
I.C., § 34-1903, as added by 1981 (Ex. Sess.), ch. 1, § 4, p. 4; am. 1992, ch. 1, § 2, p. 3.

CHAPTER 20

ELECTION CONTESTS OTHER THAN LEGISLATIVE AND STATE EXECUTIVE OFFICES

34-2001. Grounds of contest.

JUDICIAL DECISIONS

ANALYSIS

Burden of proof.
Malconduct.

Burden of Proof.

In order to overcome the prima facie effect of an election return, it is incumbent on the challenger to prove not only illegal votes, but also for whom they were cast. Both these elements of proof are required to show that the illegal votes affected the result, and that, but for them, appellant would have been elected. Brannon v. City of Coeur d'Alene, — Idaho —, 292 P.3d 234 (2012).

Malconduct.

This section does not define what constitutes malconduct of the officers of election, but it must be held that any proceedings which result in unfair elections, that deprive the qualified elector of the opportunity of peaceably casting his ballot and having it counted as cast, or that permit illegal votes to be cast and counted are within the statutory provisions. Brannon v. City of Coeur d'Alene, — Idaho —, 292 P.3d 234 (2012).

Where there is no evidence on the record that would clearly establish that disputed votes in a municipal election were cast and counted illegally, and there is no evidence that any of the alleged irregularities on election day would have changed the outcome of the election, or that the final result was contrary to the actual will of the electorate, the election challenger failed to meet his burden, the district court did not err when it dismissed the challenger's claim of malconduct. Brannon v. City of Coeur d'Alene, — Idaho —, 292 P.3d 234 (2012).

34-2001A. Bond election and mill levy contests — Time for filing — Validation of elections and bonds.

RESEARCH REFERENCES

A.L.R. — Validity, construction and application of state statutory limitations periods governing election contests. 60 A.L.R.6th 481.

34-2013. Procedure in general.

JUDICIAL DECISIONS

Subpoena.

Nothing in this section, nor the rules of civil procedure, requires the district court to provide subpoenas to out-of-state, non-party witnesses: service of such subpoenas will only occur at the request of a party to the proceeding. Brannon v. City of Coeur d'Alene, — Idaho —, 292 P.3d 234 (2012).

34-2014. Testimony — Subpoena for witnesses.

JUDICIAL DECISIONS

Subpoena.

Nothing in this section, nor the rules of civil procedure, requires the district court to provide subpoenas to out-of-state, non-party witnesses: service of such subpoenas will only occur at the request of a party to the proceed-

ing. Brannon v. City of Coeur d'Alene, — Idaho —, 292 P.3d 234 (2012).

CHAPTER 21

ELECTION CONTESTS — LEGISLATIVE AND STATE EXECUTIVE OFFICES

34-2101. Grounds of contest.

JUDICIAL DECISIONS

Burden of Proof.

In order to overcome the prima facie effect of an election return, it is incumbent on the challenger to prove not only illegal votes, but also for whom they were cast. Both these elements of proof are required to show that the illegal votes affected the result, and that, but for them, appellant would have been elected. Brannon v. City of Coeur d'Alene, — Idaho —, 292 P.3d 234 (2012).

34-2124. Filing of affidavit.

RESEARCH REFERENCES

A.L.R. — Validity, construction and application of state statutory limitations periods governing election contests. 60 A.L.R.6th 481.

CHAPTER 23

RECOUNT OF BALLOTS

SECTION.

34-2301. Application for recount of ballots.
34-2302. Precincts specified for recount — Remittance.
34-2303. Ballots ordered impounded by attorney general.
34-2304. Order for recount — Procedure — Notice.
34-2305. Manner of recounting.
34-2306. Difference revealed by recount — Candidate relieved of costs.
34-2307. When general recount ordered.
34-2308. Candidate disagreeing with recount results — Appeal.
34-2309. Automatic recount.
34-2313. Recount procedures for automated tabulation systems.

34-2301. Application for recount of ballots. — (1) Any candidate for federal, state, county or municipal office desiring a recount of the ballots cast in any nominating or general election or person supporting or opposing a state, county or city measure, may apply to the attorney general therefor, within twenty (20) days of the canvass of such election, by the state board of canvassers if for federal and state office, or within twenty (20) days of the canvass of such election by the county commissioners if for a county or municipal office.

(2) Candidates for all other offices and supporters and opponents to all other ballot measures desiring a recount may apply to the county clerk within twenty (20) days of the canvass of said election by the board of county commissioners.

History.
1957, ch. 198, § 1, p. 410; am. 1985, ch. 41, § 1, p. 84; am. 2009, ch. 341, § 64, p. 993; am. 2011, ch. 285, § 15, p. 778.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, twice inserted "or municipal."

The 2011 amendment, by ch. 285, designated the existing provisions as subsection (1), inserted "or person supporting or opposing a state, county or city measure" in subsection (1), and added subsection (2).

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

34-2302. Precincts specified for recount — Remittance. — In his application he shall state the precinct or precincts in which he desires recount to be made and shall remit to the attorney general or county clerk, pursuant to section 34-2301, Idaho Code, together with his application the sum of one hundred dollars ($100) for each such precinct in which he desires a recount made.

History.
1957, ch. 198, § 2, p. 410; am. 2011, ch. 285, § 16, p. 778.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 285, inserted "or county clerk, pursuant to section 34-2301, Idaho Code."

Effective Dates.
Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

34-2303. Ballots ordered impounded by attorney general. — Upon receiving the application for recount together with the remittance required by section 34-2302, Idaho Code, the attorney general or county clerk, pursuant to section 34-2301, Idaho Code, shall cause all ballot boxes used in such election in the precinct or precincts in which recount is to be made to be immediately impounded and taken into custody by the sheriff of the county or counties in which precinct or precincts are located. In the event that the recount is of the results of a primary election the ballot boxes used to hold the blank half of the ballot shall also be impounded.

History.
1957, ch. 198, § 3, p. 410; am. 2011, ch. 285, § 17, p. 778.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 285, substituted "section 34-2302, Idaho Code" for "the preceding section" and inserted "or county clerk, pursuant to section 34-2301, Idaho Code."

Effective Dates.
Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

34-2304. Order for recount — Procedure — Notice. — The attorney general or county clerk shall then issue an order for recount. The order shall name the prior election judges and clerks of the precinct to act in the same capacity and receive the same compensation as they did on election day. The order shall provide for the place where the recount is to be made; that all candidates named on the ballot for the office contested, or a representative of either or all of them, may be present to watch the counting; and that every other person interested may be present. The order shall state the date on which the recount is to be made which shall not be more than ten (10) days from the date of the order. Copies of the order shall be mailed to each candidate named on the ballot for the office to be recounted.

History.
1957, ch. 198, § 4, p. 410; am. 1985, ch. 41, § 2, p. 84; am. 2011, ch. 285, § 18, p. 778.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 285, inserted "or county clerk" in the first sentence.

Effective Dates.
Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

34-2305. Manner of recounting. — At the time and place fixed for recounting the ballots cast in any precinct all ballots shall be recounted in plain view of the candidates or their representatives. The recount shall commence at the time and place so ordered, and shall continue until the recount is finished and the results tabulated. The attorney general shall be the final authority concerning any question which arises during the recount for federal, state, county or municipal elections. The county prosecuting attorney shall be the final authority concerning any question that arises during the recount of other elections.

History.
1957, ch. 198, § 5, p. 410; am. 1985, ch. 41, § 3, p. 84; am. 2011, ch. 285, § 19, p. 778; am. 2012, ch. 211, § 10, p. 571.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 285, deleted the former third sentence, which read: "The recount shall commence at the time and place so ordered, and shall continue until the recount is finished and the results tabulated."; and added "for federal, state, county and municipal elections" to the end of the current third sentence; and added the fourth sentence.

The 2012 amendment, by ch. 211, deleted "and if the recount is of a primary election the blank ballots shall be counted against the ballots that were voted" from the end of the first sentence.

Effective Dates.
Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.
Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

34-2306. Difference revealed by recount — Candidate relieved of costs. — If the results of the recount indicate a difference, which if projected across all the precincts of the office in question would change the result of the election in favor of the candidate requesting the recount or change in the measure being recounted, then the cost of such recount shall be borne by the

county or state and the sums of money theretofore paid for the recount shall be returned to the candidate or person who requested the recount of a ballot measure.

In order to be relieved of the costs of the recount, the candidate or person must request that at least twenty (20) precincts containing not less than five thousand (5,000) votes cast be recounted if for a federal or state office or measure, or five (5) precincts containing not less than one thousand two hundred fifty (1,250) votes cast be recounted for a state legislative district office, or at least two (2) precincts having not less than five hundred (500) votes cast be recounted for a county office or measure, or two (2) precincts having not less than two hundred (200) votes cast to be recounted in city or district elections.

History.
1957, ch. 198, § 6, p. 410; am. 1985, ch. 41, § 4, p. 84; am. 2011, ch. 285, § 20, p. 778.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 285, in the first paragraph, inserted "or change in the measure being recounted" and "or person who requested the recount of a ballot measure"; in the second paragraph, inserted "or person" following "candidate", "or measure" following "state office", and "at least" preceding "two (2) precincts", and added "or measure, or two (2) precincts having not less than two hundred (200) votes cast to be recounted in the city or district elections" at the end.

Effective Dates.
Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

34-2307. When general recount ordered. — If the candidate or person who requested the recount is relieved of the costs of the recount as described in section 34-2306, Idaho Code, the attorney general, or the county prosecuting attorney for district offices, shall require a recount to be made in all the remaining precincts of the office in question. The state shall pay for a general recount of a federal, state, or legislative district office, while the county shall pay for a general recount of a county, city or district office.

History.
I.C., § 34-2307, as added by 1985, ch. 41, § 6, p. 84; am. 2011, ch. 285, § 21, p. 778; am. 2012, ch. 211, § 11, p. 571.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 285, inserted, "or person" following "candidate" near the beginning of the paragraph and inserted "city or district" preceding "office" at the end of the paragraph.

The 2012 amendment, by ch. 211, inserted "or the county prosecuting attorney for district offices" in the first sentence.

Effective Dates.
Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

34-2308. Candidate disagreeing with recount results — Appeal. — (1) Any candidate or person may appeal the results of a recount or the determination that a recount is not necessary when:

(a) Any candidate for the office or the person on either side of a measure for which a recount has been requested disagrees with the results of the recount and alleges that the law has been misinterpreted or misapplied;

(b) It appears that a different application or interpretation of the law would have required a general recount where no general recount was ordered; or

(c) It appears that a different application or interpretation of the law would not have required a general recount where a general recount was ordered;

then the candidate claiming the misinterpretation or the misapplication of law may appeal to the district court in the county concerned if the office is a county, municipal or district office or to the district court in Ada county if the office is a federal or state office.

(2) The submittal on appeal shall be by brief and submitted within twenty-four (24) hours following the recount. The appeal submittal shall be served upon the attorney general of Idaho or the county prosecuting attorney within twenty-four (24) hours of filing it within the district court. The appeal submittal shall also be served upon the opposing candidate(s) or representatives of the pro and con sides of the ballot measure within twenty-four (24) hours of filing the appeal in the district court.

(3) The attorney general, in consultation with the secretary of state, may respond to the submittal by brief or the prosecuting attorney, in consultation with the county clerk, may respond for district elections.

(4) The opposing candidate(s) or parties, regarding a measure, may respond to the submittal by brief.

(5) At the discretion of the district court judge, a hearing may be ordered within five (5) days of the filing of the appeal. All parties required to be served with the appeal may participate fully in the hearing. The judge may determine that the appeal may be decided on the brief without a hearing.

(6) A decision thereon shall be given within five (5) days. Any appeal from the decision of the district court must be taken within twenty-four (24) hours after a decision is rendered. A decision on the appeal shall be given within five (5) days. No further appeal shall be allowed.

History.
1957, ch. 198, § 8, p. 410; am. 1985, ch. 41, § 7, p. 84; am. 2004, ch. 48, § 1, p. 232; am. 2011, ch. 285, § 22, p. 778.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 285, in subsection (1) inserted, "or person" following "candidate" in the introductory paragraph, inserted "or the person on either side of a measure" in paragraph (a), and substituted "county, municipal or district office" for "county or district office" in the last, undesignated paragraph; in subsection (2), inserted "or the county prosecuting attorney" and "or representatives of the pro and con sides of the ballot measure"; added "or the prosecuting attorney, in consultation with the county clerk, may respond for district elections" in subsection (3); and inserted "or parties, regarding a measure" in subsection (4).

Effective Dates.
Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

34-2309. Automatic recount. — A losing candidate for nomination, or

election to a federal, state, or county office, or person supporting or opposing a ballot measure, may request a recount of the votes cast for the nomination or election to that office or passage or failure of a measure if the difference between the vote cast for that candidate and for the winning candidate for nomination or election, or the difference between the yes and no votes on a measure, is less than or equal to one-tenth of one percent (0.1%) of the total votes cast for that office. All requests shall be in writing, and filed with the attorney general during the time mentioned in section 34-2301, Idaho Code.

The state shall pay for the automatic recount of a federal, state, or legislative district office, or state measure while the county shall pay for the automatic recount of a county, city or district office or measure.

History.
I.C., § 34-2309, as added by 1985, ch. 41, § 9, p. 84; am. 1986, ch. 97, § 3, p. 275; am. 2011, ch. 285, § 23, p. 778.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 285, in the first paragraph, inserted, "or person supporting or opposing a ballot measure", "or passage or failure of a measure", and "or the difference between the yes and no votes on a measure"; and, in the second paragraph, inserted "or state measure" and substituted "county, city or district office or measure" for "county office."

Effective Dates.
Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

34-2313. Recount procedures for automated tabulation systems. — (1) To ensure the accuracy of automated vote tabulation systems, the county clerk shall follow the recount procedures provided in this section.

(2) The votes from a random selection of ballots shall be tallied by hand and the votes from the same ballots shall be tabulated by an electronic ballot tabulating system. For statewide and federal office or a statewide measure, the number of ballots to be tallied and tabulated shall be equal to at least two (2) precincts of the ballots cast in each county. For all other offices or measures, the number of ballots to be tallied and tabulated shall be equal to the greater of one hundred (100) or five percent (5%) of the ballots cast for the office or measure, distributed by county where applicable.

(3) For a statewide or federal office or a statewide measure, if the results of the hand-tally and the automated vote tally system tabulation within the county differ by one-fourth of one percent (.25%) or less, the remaining ballots shall be recounted using automated vote tabulating systems. Otherwise, the remaining ballots shall be recounted by hand.

(4) For other offices and ballot measures, if the results of the hand-tally and electronic vote tabulating system tabulation differ by less than one percent (1%), or two (2) votes, whichever is greater, the remaining ballots shall be recounted using automated vote tabulating systems. Otherwise, the remaining ballots shall be recounted by hand.

History.
I.C., § 34-2313, as added by 2011, ch. 285, § 24, p. 778.

STATUTORY NOTES

Effective Dates.
Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

CHAPTER 24

VOTING BY MACHINE OR VOTE TALLY SYSTEM

SECTION.
34-2409. Examination of machines by secretary of state prior to adoption.
34-2412. Composition of precinct election boards.
34-2413. Preparation of machines for use — Instructions.
34-2424. Paper ballots used in conjunction with voting machines.
34-2427. Voters with physical or other disability.

34-2401. Definitions.

RESEARCH REFERENCES

A.L.R. — Electronic voting systems. 12 A.L.R.6th 523.

34-2409. Examination of machines by secretary of state prior to adoption. — (1) The secretary of state shall publicly examine all makes of voting machines or vote tally systems submitted to him and determine whether the machines or vote tally systems comply with the requirements of this chapter, and can safely be used by voters at elections under the provisions of this chapter. Any voting machine or vote tally system shall be certified by the secretary of state for use in Idaho. Except for functions or capabilities unique to this state, voting machines and vote tally systems shall be tested and the results certified by an independent testing authority designated by the secretary of state prior to certification.

(2) Any person owning or interested in a voting machine or vote tally system may submit it to the secretary of state for examination. No examination shall be conducted unless documentation is provided indicating that the voting machine or vote tally system meets the federal election commission standards. For the purpose of assistance in examining the machine or vote tally system the secretary of state may employ not more than three (3) individuals who are expert in one (1) or more of the fields of data processing, mechanical engineering and public administration. The compensation of these assistants shall be paid by the person submitting the machine or vote tally system.

(3) Within thirty (30) days after completing the examination and approval of any voting machine or vote tally system the secretary of state shall make and file in his office his report on the machine or vote tally system, together with a written or printed description and drawings and photographs clearly identifying the machine or vote tally system and the operation thereof. As soon as practicable after such filing, the secretary of

state upon request shall send a copy of the report to any governing body within the state.

(4) Any voting machine or vote tally system that receives the approval of the secretary of state may be used for conducting elections in this state. Any machine or vote tally system that does not receive such approval shall not be adopted for or used at any election. After a voting machine or vote tally system has been approved by the secretary of state, any change or improvement in the machine or vote tally system that does not impair its accuracy, efficiency or capacity shall not render necessary a reexamination or reapproval of the machine or vote tally system.

(5) Any voting system, including paper ballots, that was used in the 2004 general election shall be continued to be authorized for use as long as the voting system meets the requirements of the "Help America Vote Act of 2002," Public Law 107-252.

(6) For all elections conducted after 2004, no direct recording electronic voting device shall be used unless the direct recording electronic voting device has a voter verifiable paper audit trail. Any certifications of a direct recording electronic voting device without a voter verifiable paper audit trail are hereby declared null and void.

(7) The secretary of state may periodically review the various voting systems that have been certified for use in the state to ensure such systems meet the standards set forth by the federal election assistance commission and the national institute of standards and technology. Any voting system that does not meet such standards may be decertified after a public hearing.

History.
1970, ch. 140, § 140, p. 351; am. 2001, ch. 272, § 4, p. 993; am. 2005, ch. 282, § 1, p. 918; am. 2007, ch. 202, § 8, p. 620; am. 2012, ch. 179, § 1, p. 470.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 179, in subsection (1), substituted the present second sentence for "In order for any voting machine or vote tally system to be certified in Idaho it must meet the federal election commission standards and be approved for use by an independent testing authority sanctioned by the national association of state election directors (NASED) or be certified by the federal election assistance commission" and added the last sentence.

34-2412. Composition of precinct election boards. — (1) The election board of each election precinct in which a voting machine or vote tally system is used shall consist of an election judge and one (1) or more clerks. Each election board shall contain personnel representing all existing political parties if a list of applicants has been provided to the county clerk by the precinct committeemen of the precincts at least sixty (60) days prior to the primary election. The county clerk shall establish the number of election board clerks.

(2) The qualifications and duties of election judges shall apply to the appointment of election board clerks in counties or precincts where voting machines or vote tally systems are used.

History.
1970, ch. 140, § 143, p. 351; am. 1974, ch. 75, § 1, p. 1162; am. 1989, ch. 346, § 1, p. 873; am. 2012, ch. 211, § 12, p. 571.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 211, deleted former subsection (3), regarding adjusting election precincts.

Effective Dates.
Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

34-2413. Preparation of machines for use — Instructions. — (1) Before each election at which voting machines or vote tally systems are to be used, the county clerk of a county, in which voting machines or vote tally systems are to be used, shall cause them to be properly prepared and shall cause the election board to be properly instructed in their use.

(2) For the purpose of giving such instruction, the county clerk shall call the meeting or meetings of the election board that are necessary. Each election board shall attend the meetings and receive the instruction necessary for the proper conduct of the election with the machine or vote tally system.

(3) No election board judge or clerk shall serve in any election at which a voting machine or vote tally system is used unless he has received the required instruction and is fully qualified to perform the duties in connection with the machine or vote tally system; but this requirement shall not prevent the appointment of an election board clerk to fill a vacancy in an emergency.

History.
1970, ch. 140, § 144, p. 351; am. 2012, ch. 211, § 13, p. 571.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 211, deleted "or the clerk of a city, district or other political subdivision" following "the county clerk of a county" near the middle of subsection (1).

Effective Dates.
Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

34-2424. Paper ballots used in conjunction with voting machines. — In any election where voting machines or vote tally systems are used:

(1) Paper ballots may be used to record the electors' votes for party offices.

(2) Paper ballots may be used to record the electors' votes for or against municipal candidates or measures.

(3) Paper ballots which are used in conjunction with voting machines may be returned to the office of the county clerk for counting by special counting boards. Ballots so counted shall be tallied and returned by precinct or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code.

(4) Ballots or ballot cards may be returned to the office of the county clerk for counting.

(5) In the event that paper ballots are used in conjunction with voting machines or vote tally systems to record write-in votes, these paper ballots may be returned to the office of the county clerk for counting by special counting boards. Ballots so counted shall be tallied and returned by precinct or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code.

History.
1970, ch. 140, § 155, p. 351; am. 2012, ch. 211, § 14, p. 571.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 211, inserted "or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code" at the end of subsections (3) and (5).

Effective Dates.
Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

34-2427. Voters with physical or other disability. — (1) The election board clerks shall instruct electors on how to record their votes on the voting machine or vote tally system, and shall give assistance to any elector who declares that he is unable by reason of physical or other disability to record his vote on the machine or vote tally system, and on request by the elector after he has entered the voting booth, shall give him the necessary information to enable him to record his vote.

(2) Any elector who, because of blindness, physical or other disability, is unable to mark his ballot shall, upon request, receive the assistance of the election board clerks or some other person chosen by the elector in the marking thereof. Such clerks or person shall ascertain the wishes of the elector and mark his ballot in accordance therewith, and shall thereafter give no information regarding such marking. The election board judge may require a declaration of disability to be made by the elector under oath. Whenever an elector receives assistance in this manner, a clerk shall make a notation thereof in the combination election record and poll book following the name of the elector.

(3) If any elector, after entering the voting booth, asks for information regarding the operation of the voting machine or marking device, the election board clerks shall give him the necessary information.

History.
1970, ch. 140, § 158, p. 351; am. 1972, ch. 129, § 2, p. 257; am. 2010, ch. 235, § 20, p. 542.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 235, rewrote the section heading, which formerly read: "Physically disabled voters"; and in subsections (1) and (2), substituted "physical or other disability" for "physical disability or other handicap."

CHAPTER 25
ELECTION CAMPAIGN FUND

SECTION.
34-2501 — 34-2505. [Repealed.]

34-2501. Definitions. [Repealed.]

Repealed by S.L. 2010, ch. 3, § 1, effective January 1, 2010.

History.
1975, ch. 132, § 1, p. 290; am. 1978, ch. 40, § 1, p. 69.

STATUTORY NOTES

Effective Dates.
Section 4 of S.L. 2010, ch. 3 declared an emergency retroactively to January 1, 2010 and approved February 16, 2010.

34-2502. Election campaign fund — Creation. [Repealed.]

Repealed by S.L. 2010, ch. 3, § 1, effective January 1, 2010.

History.
1975, ch. 132, § 2, p. 290; am. 1976, ch. 260, § 1, p. 880; am. 1994, ch. 180, § 54, p. 93.

34-2503. Election campaign fund — Distribution. [Repealed.]

Repealed by S.L. 2010, ch. 3, § 1, effective January 1, 2010.

History.
1975, ch. 132, § 4, p. 290; am. 2008, ch. 62, § 1, p. 154.

STATUTORY NOTES

Effective Dates.
Section 4 of S.L. 2010, ch. 3 declared an emergency retroactively to January 1, 2010 and approved February 16, 2010.

34-2504. Statement of expenditures filed before election day. [Repealed.]

Repealed by S.L. 2010, ch. 3, § 1, effective January 1, 2010.

History.
I.C., § 34-2504, as added by 1994, ch. 54, § 2, p. 93.

34-2505. Statement of expenditures — Rules — Unqualified expenditures — Unexpended balance. [Repealed.]

Repealed by S.L. 2010, ch. 3, § 1, effective January 1, 2010.

History.
1975, ch. 132, § 6, p. 290; am. 1994, ch. 54, § 3, p. 93; am. 1994, ch. 180, § 55, p. 96.